



REPUBLIC OF KENYA



Mutai & another v Salim & 2 others; Mutai & another (Interested Parties) (Environment and Land Case E020 of 2023) [2025] KEELC 6327 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6327 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND CASE E020 OF 2023
GMA ONGONDO, J
SEPTEMBER 23, 2025**

BETWEEN

ELIZABETH JEMUTAI NDIWA 1ST PLAINTIFF

MARY JERUGUT NDIWA 2ND PLAINTIFF

AND

JOB KIPROTICH SALIM 1ST DEFENDANT

KENNEDY SALIM 2ND DEFENDANT

FLORENCE CHELANGAT NDIWA 3RD DEFENDANT

AND

MICHAEL KIPKOECH MUTAI INTERESTED PARTY

CHRISTINE JEBET LUTTA INTERESTED PARTY

RULING

1. In an application by way of Notice of Motion dated 29th April 2025, the two applicants/proposed interested parties through Reece Mwani and Company Advocates are seeking the following orders;
 - a. Moot
 - b. That pending the hearing and determination of the instant suit, this Honourable court be pleased to issue a temporary injunction against the respondents, their agents, servants and/or any other person claiming or acting on the respondents' instructions restraining them from trespassing, destroying fence, constructing, ploughing, disposing of and /or in any manner dealing with two acres piece of land from the bigger parcel of land known as Nandi/ndalat Settlement Scheme/95 belonging to the 1st and 2nd applicants/proposed interested parties.



- c. Spent
 - d. That the court be pleased to enjoin the proposed interested parties into this case as interested parties.
 - e. Spent
 - f. That the Honourable court be pleased to set aside the proceedings and/or all resulting orders.
2. The foundation of the application upon the applicants' joint affidavit sworn on even date and the grounds, inter alia;
 - a) That, 1st Applicant purchased one (1) acre of the property known as Nandi/ndalat Settlement Scheme/95 (The suit land) on 3rd April, 2019 at a consideration of Kshs. 850,000/= as shown in the document marked "MKM-2", a copy of sale agreement annexed to the affidavit.
 - b) That, 2nd Applicant purchased one (1) acre of the suit land on 9th October, 2017 as revealed in a copy of sale agreement ("MKM-3") annexed to the affidavit in support of the application.
 - c) That, the Respondents have been threatening to trespass onto the applicants' properties from time to time hence this application.
 - d) That, the applicants learned of this case when they reported the trespass at Kipkaren Police Station as per "MKM-6" being a copy of OB number annexed to the affidavit.
 3. By the replying affidavit sworn on 30th May 2025 by the 2nd defendant/respondent for and on behalf of the 1st and 3rd defendants as well as himself through M/S Korir, Jepleting and Company Advocates, the application is opposed, it is averred in part that the respondents are the biological children of the absolute registered proprietor of the suit land as per copy of title deed (KS-1) ...their mother the 1st plaintiff was seriously ill and was not in a position to enter into and execute the agreement dated 17th October 2017 (KS-5) attached to the application containing their names which is meant to mislead the court.
 4. Further, the defendants/respondents averred that the suit land was originally owned by the 2nd respondent's father, Salim Ndiwa (Deceased) and the 1st plaintiff succeeded the estate thereof as per Eldoret Succession Cause No. 72 of 1995 as revealed in a copy of letter dated 7th February 2022 (KS-3). That the mediation settlement agreement (KS-4) never mentioned the applicants and /or their interests at all. That they neither consented to nor signed it hence, the application lacks merit, a waste of the court's time and the same be dismissed with costs3rd Respondent?
 5. By the replying affidavit sworn on 5th May 2025 through M/S Lusinde Khayo and Company Advocates, the 2nd plaintiff/applicant is in support of the application. She deposed, inter alia, that the 1st plaintiff developed medical complication and financial constraints and communicated to her children on how she would love to allocate her land by sale as shown in letter of no objection (MJN 1) attached to the application. That thus, joinder of the interested parties would be vital for real issues to be determined once and for all herein.
 6. Hearing of the application was by way of written submissions pursuant to the directions of the court given on 4th June 2025 in consonant with Order 51 Rule 16 of the [*Civil Procedure Rules 2010*](#).
 7. In the applicants/interested parties' submissions dated 1st July 2025, the application and the orders sought therein are set out. It was submitted, inter alia, that the applicants are the owners of two acres of the suit land through purchase and are in occupation of the same. That the respondents



have threatened to trespass thereon and therefore, the application be allowed as it has been brought timeously, in good faith and in the interest of justice. Reliance was made on Order 1 Rule 10 (2) of the [Civil Procedure Rules 2010](#), the case of [Judicial Service Commission v Speaker of the National Assembly & another](#) (2013) eKLR, [Francis Kariuki Muruatetu & another v Republic & 5 others](#) (2016) eKLR, to fortify the submissions.

8. By the submissions dated 18th July 2025, the respondents referred to the orders sought in the application, stated the background including the claim by the applicants/interested parties' alleged purchase for value of the suit land from the registered proprietor, Elizabeth Jemutai Ndiwa. That the respondents have approached the court with unclean hands for non-disclosure of material facts hence, obtained a consent decree and threatened to evict the applicants from their respective portions of land to the detriment of the applicants. To buttress the submissions, counsel relied on [Vesl & 2 others v Ndolo & another](#) {2024} KEMC 10 (KLR) on overriding interests including trusts under section 28 of the [Land Registration Act 2016](#) (2012) and [Re Estate of Kamau Macharia \(Deceased\)](#) Succession Cause No. 213 of 2006 (2025) KEHC 20 (KLR) as regards an interested party in a legal proceeding. In discussing the three issues inclusive whether the applicants/interested parties are entitled to the proprietary interests and rights over the suit land parcel Nandi/ndalat Settlement Scheme/95, counsel submitted that the applicants have not demonstrated reasons for joinder to the proceedings herein. Counsel implored the court to consider the defendants/respondents' interests in the suit land and find the application with no merit, baseless and unfounded hence, dismiss it with costs.
9. I have considered the entire application, the replying affidavits and the rival submissions. Therefore, the issues for determination are whether the applicants have established that they deserve the temporary injunction, joinder, setting aside of proceedings and all or resulting orders as well as costs of the application.
10. On the injunctive relief sought in the application, I bear in mind Order 40 of the [Civil Procedure Rules 2010](#) and the decision in the celebrated case of [Giella v Cassman Brown and Co. Ltd](#) (1973) EA 358 on the triple hurdles namely a prima facie case with probability of success, irreparable harm that cannot be compensated by damages and if in doubt, the balance of convenience. A prima facie case is one that raises serious questions for trial as defined in the case of [Mrao Ltd v First American Bank of Kenya Ltd & 2 others](#) (2013) KLR 125.
11. Plainly, the applicant has to surmount the three hurdles sequentially, logically and distinctly; see [Kenya Commercial Finance Co. Ltd v Afraha Education Society](#) (2001) Vol 1 EA 86.
12. The applicants rely on the sale agreement executed with the 1st plaintiff who is the registered owner of the suit land. They aver that that the respondents have threatened to evict them, destroy fences and disrupt their possession of the suit land. The balance of convenience favours maintenance of the prevailing status quo as the applicants are in possession of the suit land and seek to be joined to these proceedings in lieu of temporary injunction thus, prevent unlawful eviction from the same worthwhile.
13. It is the position of the applicants that they be joined to the proceedings as interested parties. Order 1 Rule 10 (2) of the [Civil Procedure Rules 2010](#) provides that the court may at any stage of the proceedings order the addition of a party whose presence is necessary to enable the court or effectually and completely adjudicate upon and settle all questions involved in the suit.



14. In the case of *Communication Commission of Kenya and 4 others v Royal Media Services & 7 others* (2015) eKLR, the Supreme Court of Kenya observed, inter alia;

‘An interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio.....’

15. It is the lamentation of the applicants is that they purchased portions of the suit land from the 1st plaintiff as per the sale agreements. On the other hand, the respondents contend that they did not consent to sale as the suit land is ancestral and the 1st plaintiff holds the same in trust for them.

16. In the obtaining circumstances, joinder of the applicants will result in complete settlement of all the questions involved in the proceedings, protect their rights which could otherwise be adversely affected in law and prevent a likely course of proliferated litigation; see also *Meme v Republic* (2004) 1 EA 124.

17. Also, the applicants seek to set aside proceedings herein. However, maintenance of status quo order as stated in paragraph 12 hereinabove in lieu of temporary injunctive relief sought alongside joinder of parties duly resolved, would not halt the proceedings herein. The joinder of the applicants will allow the matter to proceed with all the necessary parties hence, no compelling reason for setting aside the proceedings herein.

18. Thus, I find the application by way of Notice of Motion dated 29th April 2025 by the applicants/ proposed interested parties partially merited and it is hereby ordered as follows;

- a. The prayers for temporary injunction and setting aside of proceedings are disallowed.
- b. Prayer for joinder of the applicants to the instant suit as stated in paragraph 1 (d) hereinabove is allowed accordingly.
- c. Costs be in the cause.

19. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 23RD DAY OF SEPTEMBER, 2025

HON. G M A ONGONDO

JUDGE

In the presence of: -

Ms Khayo for the Plaintiffs/Respondents

Walter, Court Assistant

