



REPUBLIC OF KENYA



**KENYA LAW**  
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**Opiyo v Rotino (Environment and Land Case E028 of 2025)  
[2025] KEELC 6158 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6158 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E028 OF 2025**

**CK NZILI, J**

**SEPTEMBER 24, 2025**

**BETWEEN**

**ELIZABETH JUDDY OPIYO ..... PLAINTIFF**

**AND**

**PHILIP RUTO ROTINO ..... DEFENDANT**

**RULING**

1. The court is asked by the application dated 30/6/2025 to issue:
  - i. ..Spent.
  - ii. A temporary injunction restraining any dealings over Land Parcel Plot No. 298, Chepchoina Settlement Scheme, Phase 1.
  - iii. An inhibition order restraining the respondent from selling, trespassing, leasing, or charging Land Parcel Plot No. 298, Chepchoina Settlement Scheme Phase 1.
2. The reasons are contained on the face of the application and in a supporting affidavit of Elizabeth Juddy Opiyo, sworn on 30/6/2025. It is deposed that the applicant is currently a resident of Tacoma, Washington, United States of America, who is owed Kshs. 27,000,000/= by the respondent, who vide a memorandum of understanding dated 26/11/2024, undertook to transfer to her 30 acres of land parcel Nos. 391, 392, 393, 505, and 508 Chepchoina Settlement Scheme Phase 1, and satisfy the debt as per annexure marked OEJ-1.
3. The applicant deposes that since the aforesaid parcels of land are still registered in the names of the respondent's deceased father, he had undertaken, but has failed to commence succession proceedings. The applicant deposes that since the respondent has not offered to settle the debt and instead has been evading the repayment, she is apprehensive that he is likely to sell, lease and or change plot No. 298,



- which he owns as per annexure marked OEJ-2(a), (b) and (c), to frustrate and or make sure that the debt is not settled.
4. The applicant deposes that the amount owed by the respondent is colossal, and she stands to suffer substantial loss and damage unless the debt is settled.
  5. Whereas the application was served upon the respondent and a return of service was sworn by George Mumali on 17/7/2025, no response has been made to the same.
  6. A party seeking a temporary order of injunction has to establish a prima facie case with a probability of success at the hearing, demonstrate that it will suffer irreparable loss or damage in the absence of a temporary injunction, and lastly, that the balance of convenience tilts in favour of granting such orders.
  7. A prima facie case is established where, looking at the material presented, a right has been infringed to call for an explanation from the opposite party. In *Mrao Ltd - v- First American Bank of (K) Ltd & Others* [2003] eKLR, the court observed that the power of a court in an application for an interlocutory injunction is discretionary to be exercised based on the law and evidence. The court said that a prima facie case is more than an arguable case, and that it is not sufficient to raise issues. The court held that the evidence must show an infringement of a right and the probability of success of the applicant's case at trial.
  8. In *Nguruman Ltd - v- Jan Bonde Nielsen* [2014] eKLR, the court said that in establishing whether or not a prima facie case exists, a court need not conduct a mini-trial, but rather see to it that on the face of it, a person applying for an injunction has a right which has been or is threatened with violation. The court further held that a person need not establish title to it, for it is enough to show that he has a fair and bona fide question to raise as to the existence of the right he alleges.
  9. The applicant has attached a copy of a memorandum of understanding where the respondent has acknowledged the existence of a debt of Kshs. 27,000,000/=. It was to be offset by offering 30 acres of land from Plots No. 391, 392, 393, 505, and 508, Trans Nzoia/Chepchoina Phase 1, in the name of his late father. The applicant now says that due to breach of the memorandum of understanding, she has now established that the respondent is an allottee of plot No. 298 Chepchoina Settlement Scheme Phase 1 as per letter of offer, acceptance, and payment receipts dated 22/8/2008, 14/8/2009, and 25/11/2008, annexed as OEJ-2(a), (b), and (c).
  10. Section 63 (c) and (e) of the *Civil Procedure Act* grants this court powers to prevent the ends of justice from being defeated, to grant a temporary injunction, or to make such other interlocutory orders as may appear to the court as just and convenient.
  11. Order 40 Rule 2 of the Civil Procedure Rules provides that a court, in a suit for restraining the defendant from committing a breach and or control or other injury, may issue a restraining order on such terms as to the injury as to damage.
  12. Irreparable loss refers to one that may not be quantified monetarily. A party must demonstrate the nature and the extent of the injury. The injury must be actual, real, substantial, and demonstrable.
  13. In *Nguruman Ltd - v- Jan Bonde Nielsen* (*supra*), the court said that an injury is irreparable where there is no standard by which the amount can be measured with reasonable accuracy.
  14. Coming to the balance of convenience, it is the inconvenience caused to the applicant in the absence of an injunction, as opposed to what the respondent would suffer if an injunction is granted. In *Pius Kipchirchir Kogo - v- Frank Kimeli Tenai* [2018] eKLR, the court held that an applicant has to show that the comparative terms that the inconvenience likely to arise from withholding the injunction will be greater than that which is likely to arise from granting.



15. In *Paul Gitonga Wanjau - v- Gathuthis Tea Factory Co. Ltd & Others* [2016] eKLR, the court observed that where any doubts exist and the applicant's right, or if the right is not disputed, but its violation is denied, the court in determining whether or not to grant an injunction will look it into the nature of injury, and who will suffer greater harm with the outcome of the motion.
16. In *Amir Suleiman - v- Amboseli Resort Ltd* [2004] eKLR, the court observed that in an application of this nature, it should opt for the lower rather than the higher risk of injustice.
17. Having in mind the foregoing caselaw, the respondent has not contested the existence of the contract, its breach thereof, and the likely injury, loss, or damage to the applicant.
18. The court, therefore, opts for the lower risk of injustice by preserving the status of the subject land likely to dissipate, in realization of the judgment once delivered in favour of the plaintiff.
19. Section 68(1) of the *Land Registration Act* relates to inhibition orders. It is in the nature of a prohibitory injunction, restraining dealings on land pending further orders of the court. It seeks to preserve the property in question from acts that would otherwise render a court order incapable of being executed. There is no recent official search attached to show who is the registered owner of plot No. 298. The court cannot, therefore, issue an order in vain.
20. The upshot is that I grant prayer No. (ii) only to last for one (1) year.
21. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025.**

In the presence of:

Court Assistant – Dennis

Miss Arunga for the plaintiff present

Defendant absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

