

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO. E014 OF 2025

BOMET TECHNICAL INSTITUTE LIMITED

T/A LOMU INVESTMENTS.....

.....PLAINTIFF

VERSUS

BOMET UNIVERSITY COLLEGE.....1ST

DEFENDANT

THE DIRECTOR OF SURVEYS.....2ND

DEFENDANT

RULING.

Introduction.

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 3rd March, 2025. It is expressed to be brought under **Sections 1A, 1B, 3A & 63 (e)** of the **Civil Procedure Act** and **Order 40 Rule 1 & Order 51 Rule 1** of the **Civil Procedure Rules**.

2. The application seeks the following orders;

a. *Spent*

b. Spent

c. That pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order of interim injunction restraining Defendants (sic) either by themselves, agents, or servants howsoever from entering, depositing construction material, trespassing, constructing dwelling houses, selling, charging, transferring, illegally amending records relating to or in any way dealing with the Plaintiff's parcel of land known and fully described as LR No. Bomet Township/270 measuring approximately 3.000 Ha.

d. That the cost of this application be in the cause.

- 3.** The application is based on the grounds on its face and the supporting affidavit of **Benard Mutai** sworn on 3rd March, 2025.

Factual Background.

4. The Plaintiff/Applicant commenced the present proceedings vide the Plaint dated 3rd March, 2025 where it seeks the following prayers;

a. A declaration that the 1st Defendant is a trespasser in the Plaintiff (sic) parcel of land known and fully described as LR No. Bomet Township/270.

b. An order of permanent injunction restraining Defendants (sic) either by themselves, agents, or servants howsoever from entering, depositing construction material, trespassing, constructing dwelling houses, selling, charging, transferring, amending records relating to or in any way dealing with the Plaintiff's parcel of land known and fully described as LR No. Bomet Township/270 measuring approximately 3.000 Ha.

c. An order directing the 2nd Defendant to ammend(sic) the Registry Index Map so as to recapture the Plaintiff's parcel of land known and fully described as LR No. Bomet Township/270.

d. An order of eviction of the 1st Defendant from the suit property.

e. General Damages for trespass.

f. Mesne profits.

g. Costs of this suit.

5. As at the time of writing of this ruling, neither of the Defendants/Respondents has filed their Statements of Defence.
6. The application under consideration first came up for hearing on 13th March, 2025 when the Court directed that it be served upon the Defendants/Respondents.
7. Subsequently, it came up for hearing on 23rd April, 2025 when the Court directed that it be heard by way of written submissions.
8. On 7th July, 2025 it was mentioned for submissions and then reserved for ruling.

9. The 2nd Defendant/Respondent did not file a response to the application under consideration.

The Plaintiff/Applicant's Contention.

10. The affidavit in support of the application is sworn by **Benard Mutai** the Plaintiff/Applicant's director.
11. He contends that the Plaintiff/Applicant is an incorporated company.
12. He also contends that the Plaintiff/Applicant is the registered owner of land parcel No. Bomet Township/270.
13. He further contends that the Plaintiff/Applicant was allotted the suit property by the national government in the year 1997 upon making an application.

- 14.** It is his contention that at the time of allotment, the Plaintiff/Applicant was known as Lomu Investments. He goes on to state that in the year 2012, the Plaintiff/Applicant registered its change in particulars and it is now known as Bomet Technical Institute Limited.
- 15.** It is also his contention that the Plaintiff/Applicant has been in occupation of the suit parcel since the year 1997.
- 16.** It is further his contention that in January, 2022, the 1st Defendant/Respondent invaded the suit parcel without any justifiable cause and begun drilling a borehole and constructing permanent buildings.
- 17.** He contends that they tried to negotiate with the 1st Defendant/Respondent to stop carrying out the said activities but its agents were unruly and hostile. He goes on

to state that the 1st Defendant/Respondent continued with the said construction.

- 18.** He also contends that the 1st Defendant/Respondent has no identifiable right to the suit property.
- 19.** He further contends that he is advised by his Counsel on record that the principles of injunctions are set out in the judicial decisions of **Giella versus Cassman Brown [1973] EA 358** and **Nguruman Limited versus Jan Bonde Nielson & 2 Others CA No. 77 of 2012 [2014] eKLR**.
- 20.** It is his contention that the Plaintiff/Applicant has established that it has a *prima facie* case as the certificate of title which is in the name of the Plaintiff/Applicant has been attached.
- 21.** It is also his contention that he is apprehensive that if the Court does not restrain the 1st Defendant/Respondent, they

will continue with their acts of trespass and construction to the Plaintiff/Applicant's detriment.

- 22.** It is further his contention that since the Plaintiff/Applicant is the registered and rightful owner of the suit parcel, the balance of convenience tilts in its favour.
- 23.** He ends his deposition by stating that it is in the interest of justice that the Court grants the injunctive orders sought.

The 1st Defendant/Respondent's Response.

- 24.** In response to the application, the 1st Defendant/Respondent filed Grounds of Opposition dated 14th April, 2025. They are as follows;

a. That the instant application as instituted is speculative, an abuse of the Court process, has no merit and is based on a misconception of law.

b. The application lacks ground to stand on (sic) as the 1st Defendant has no

connection whatsoever with the suit parcel of land, that is: LR No. Bomet Township/270.

c. That the 1st Defendant is the registered proprietor of all parcel (sic) of land known as: L.R No. Bomet Township/437.

d. The adjacent facilities to the 1st Defendant's parcel of land that is: L.R NO. Bomet Township/437 are: a public primary school: St. Michael's Primary School and, a public secondary school: St. Michaels Secondary School. (sic)

e. The 1st Defendant has been in occupation and ownership of the land parcel number: L.R Bomet Township/437 and the alleged trespassed activities were undertaken the said parcel. (sic)

f. The occupiers of the adjacent parcels of land have never made any complaint nor commenced action against the 1st Defendant in relation to its ownership and occupation of parcel number: L.R Bomet Township/437.

g. The area to which the 1st Defendant's parcel of land is located was planned for public educational facilities as per

Development Plan (sic) for Bomet County and formerly town council hence is public land (sic). In that regard, the Honorable Court should treat the Applicant's document proving ownership with great caution and with a disclaimer to the effect that there was a need to conduct due diligence to establish the circumstances under which the Applicant acquired the suit land.

h. The Applicant has failed to inform the Honorable Court that land parcel number: L.R. Bomet Township/437 exists as a separate parcel from Land Parcel Number: L.R Bomet Township/270.

i. The 1st Defendant is not aware of Land Parcel Number: L.R Bomet Township/270 and has never seen the Applicant in occupation of any adjacent parcels of land to parcel number L.R Bomet Township/437.

j. The Applicant is seeking to blackmail and hood wink the Honorable Court into making a determination of legal ownership and even boundary dispute of an alleged inexistent and contested

parcel of land as opposed to a trespass claim as presently filed before this Court (sic).

k. The Applicant is using the 1st Defendant as a scapegoat into its ownership and possession woes with the adjacent parcel to the 1st Defendants Land Parcel Number: Bomet Township/437 and for this reason there is no merit in the current suit and application as presently filed (sic).

l. The application is largely misleading and has been brought in bad faith for reasons that:

i. The 1st Defendant was not a party in Kericho High Court Judicial Review Application No. 14 of 2012.

ii. Applicant has failed to establish ownership and possession of the subject parcel which is integral to a claim of trespass.

iii. Applicant had not established a prima facie case as it is was not the owner nor occupier of the suit property.

- iv. In failing to establish ownership, the Applicant lacks locus standi to institute the suit and the instant application.**
- m. The 1st Defendant is a public university serving the needs of the public at large, therefore, the Applicant will not suffer irreparable loss if the application is not granted.**
- n. As regards the balance of convenience, the same tilts in favor of maintaining the status quo of the suit property.**
- o. The Applicant had not demonstrated that it was developing the suit land as the document presented by the Applicant was a Part Development Plan and not a development plan.**
- p. That the Certificate of Title does not indicate how the same was obtained and the same could have been illegally obtained since no survey of the suit land was conducted (sic).**
- q. That the application be dismissed with costs as the Applicant is guilty of material non-disclosure, an essential**

requirement when seeking interim injunctions.

r. That the Applicant is on a fishing expedition, since it lacks any tangible evidence save for the now obvious shaky hope that it may be successful in proving ownership and existence of L.R NO. Bomet Township/270 wherein, it will be seeking reinstatement of its prescriptive right of possession as relates to the suit land (sic).

s. That the Applicant's rights should not be prejudicial to the rights of others and more especially public interest.

t. That the instant application lacks merit, is frivolous and vexatious.

u. That the Applicant is guilty of laches for commencing a suit pegged on trespass as a cause of action beyond its statutory limit as stipulated in Limitation of Actions Act at Section 4 (sic).

The Plaintiff/Applicant's Response to the 1st Defendant/Respondent's Grounds of Opposition and Replying Affidavit.

- 25.** In response to the Defendant/Respondent's Grounds of Opposition and Replying Affidavit, the Plaintiff/Applicant filed a Further Affidavit sworn by **Benard Mutai** on 11th June, 2025.
- 26.** He deposes that the 1st Defendant/Respondent in its Replying Affidavit confesses to obtaining the Plaintiff/Applicant's Letter of Allotment and illegally procuring a Certificate of Title.
- 27.** He also deposes that all this transpired without the Plaintiff/Applicant's express instructions or consent.
- 28.** He further deposes that the entire process of acquisition and subsequent registration of LR No. **Bomet Township/437** was
illegal and unprocedural.

- 29.** It is his deposition that the title now being held by the 1st Defendant/Respondent known as LR No. **Bomet Township/437** cannot be considered infeasible as it was obtained illegally.
- 30.** He ends his deposition by stating that the Court should in the interest of justice grant injunctive orders against the Defendants/Respondents.
- 31.** This Court notes that even though the Plaintiff/Applicant makes reference to and has filed a response to the 1st Defendant/Respondent's Replying Affidavit, no such Replying Affidavit is in the Court Record and it is also not on the e-filing platform.
- 32.** I must also state that what the 1st Defendant/Respondent has filed as grounds of opposition is strictly speaking not grounds of opposition. A grounds of opposition is filed in response to an application when the matters stated therein

answer to questions of law and not of fact. I take great exception to this document filed as a grounds of opposition.

Issues for Determination.

- 33.** The Plaintiff/Applicant filed its submissions on 17th June, 2025 while the 1st Defendant/Respondent filed its submissions on 25th June, 2025.
- 34.** The Plaintiff/Applicant submits on the following issues;
- a. *Whether the Plaintiff/Applicant has met the conditions requisite for the grant of the orders of interim injunction.***
 - b. *Whether the Plaintiff/Applicant is entitled to be granted the prayers sought herein.***
- 35.** On the first issue, the Plaintiff/Applicant relies on the judicial decisions of **M M v D C J & another [1995] eKLR, Nguruman Limited v Jan Bonde Nielson & 2 Others [2014] eKLR** and submits that it has demonstrated that it is the registered owner of LR No. Bomet Township/270.

36. The Plaintiff/Applicant reiterates that it was allotted the suit parcel of land in the year 1997 and has been in peaceful occupation for a period of over twenty-eight years.
37. The Plaintiff/Applicant also reiterates that the 1st Defendant/Respondent has trespassed on the suit parcel of land and has drilled a borehole.
38. The Plaintiff/Applicant submits that it has demonstrated that it has a legal and equitable interest in the land which is under threat of violation thereby disclosing a *prima facie* case with probability of success.
39. On whether the it will suffer irreparable loss or damage, the Plaintiff/Applicant relies on **Waithaka v Industrial and Commercial Development Corporation [2001] eKLR** and reiterates that it has been in occupation of the suit parcel for a period of over twenty-eight years.

- 40.** The Plaintiff/Applicant submits that the 1st Defendant/Respondent's intrusion on the suit parcel has threatened its peaceful enjoyment of its land and monetary damages will not restore its legal title or the peaceful enjoyment of land that has been interfered with.
- 41.** The Plaintiff/Applicant also submits that the risk of irreparable harm justifies the need for injunctive relief.
- 42.** The Plaintiff/Applicant further submits that the balance of convenience tilts in its favour.
- 43.** The Plaintiff/Applicant relies on the judicial decision of **Joseph Leboo & 2 Others versus Director Kenya Forest Services & another [2013] eKLR** and urges the Court to allow the application dated 3rd March, 2025 as prayed.
- 44.** The 1st Defendant/Respondent submits on the following issues;

a. Whether the present application by the Plaintiff/Applicant meets the required threshold on interim injunction.

b. The issue of costs (sic).

45. On the first issue, the 1st Defendant/Respondent relies on **Order 40 Rule 1** of the Civil Procedure Rules, the judicial decisions of **Giella vs Cassman Brown [1973] EA 358, Nguruman Limited versus Jan Bonde Nielson & 2 Others [2014] eKLR, Mrao vs First American Bank of Kenya Limited and 2 Others [2003] KLR 125** and submits that the Plaintiff/Applicant has not demonstrated that it has a *prima facie* case.

46. The 1st Defendant/Respondent also submits that the suit property is in the possession of St. Michael's Primary School.

47. The 1st Defendant/Respondent further submits that the issue of ownership of the suit parcel was determined in Kericho ELC Case No. 78 of 2012 Bomet Technical Institute Limited

T/A Lomu Investments v Joel Ruto & 22 Others. It adds that judgement was stayed pending appeal.

- 48.** It is the 1st Defendant/Respondent's submissions that even though the said parcel of land is registered in the name of the Plaintiff/Applicant, the said registration was obtained fraudulently.
- 49.** The 1st Defendant/Respondent relies on **Section 26 (2)** of the **Land Registration Act** and submits that the Court should not issue an injunction where the issue of ownership is still in contest.
- 50.** The 1st Defendant/Respondent submits that there is a pending appeal arising from the judgement delivered in Kericho ELC Case No. 78 of 2012 Bomet Technical Institute Limited T/A Lomu Investments v Joel Ruto & 22 Others.

- 51.** The 1st Defendant/Respondent also submits that the Plaintiff/Applicant has therefore failed to establish a *prima facie* case.
- 52.** The 1st Defendant/Respondent further submits that the Plaintiff/Applicant has not made full disclosure of all the relevant facts and its application is riddled with deliberate misrepresentation.
- 53.** It is the 1st Defendant/Respondent's submissions that the Plaintiff/Applicant failed to disclose that there is a pending appeal arising from Kericho ELC Case No. 78 of 2012 Bomet Technical Institute Limited T/A Lomu Investments v Joel Ruto & 22 Others.
- 54.** The 1st Defendant/Respondent relies on the judicial decisions of **Kenleb Cons Ltd vs New Gatitu Service Station Ltd & another** (citation not given), **Winfred Nyawira Maina vs Peterson Onyiego Gichana [2015] eKLR** and

reiterates that the Plaintiff/Applicant has failed to demonstrate a *prima facie* case.

- 55.** The 1st Defendant/Respondent submits that the Plaintiff/Applicant lacks *locus standi* and that it (1st Defendant/Respondent) has been wrongly sued as it has not trespassed on the suit property as alleged.
- 56.** The 1st Defendant/Respondent also submits that the balance of convenience does not tilt in favour of the Plaintiff/Applicant.
- 57.** The 1st Defendant/Respondent further submits that it is a public university serving students and the society at large. It would therefore be unfair for it to be denied the opportunity to serve the needs of the public.
- 58.** It is the 1st Defendant/Respondent's submissions that since the Plaintiff/Applicant has not demonstrated that it has a

prima facie case and neither has it demonstrated that the balance of convenience tilts in its favour, the Court should dismiss its application.

- 59.** The 1st Defendant/Respondent also submits on whether the Plaintiff/Applicant has demonstrated that it will suffer irreparable loss which cannot be adequately compensated by an award of damages.
- 60.** The 1st Defendant/Respondent submits that the Plaintiff/Applicant is seeking for orders of injunction over a parcel of land it does not own and neither is it in possession of.
- 61.** The 1st Defendant/Respondent also submits that the Plaintiff/Applicant has not demonstrated the loss it is likely to suffer.

62. The 1st Defendant/Respondent relies on the judicial decision of **Films Rover International Ltd vs Cannon Film Sales Ltd (1987) 1 WLR 670 AT 680** in support of its submissions.
63. The 1st Defendant/Respondent relies on **Section 27** of the Civil Procedure Rules, the judicial decision of **British Columbia (Minister of Forests) vs Okanagan Indian Band [2003] 3 SCR 371, 2003 SCC 71** and urges the Court to dismiss the Plaintiff/Applicant's application.

Analysis and Determination.

64. I have considered the Plaintiff/Applicant's application, the response thereto and the rival submissions.
65. It is my view that the only issue that arises for determination is whether the Plaintiff/Applicant has met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.

66. In the judicial decision of **Giella v. Cassman Brown [1973] EA 358**, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the Court is in doubt it will decide an application on the balance of convenience.”

67. The Plaintiff/Applicant must first establish a *prima facie* case. A *prima facie* case was defined in the judicial decision of **Mrao Limited v. First American Bank of Kenya & 2 Others [2003] eKLR** as follows;

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

- 68.** The Plaintiff/Applicant contends that it is the registered owner of LR No. **Bomet Township/270.**
- 69.** The Plaintiff/Applicant also contends that it has been peacefully occupying the said parcel of land from the year 1997 until January, 2022 when the 1st Defendant/Respondent trespassed on it.

70. The Plaintiff/Applicant further contends that the 1st Defendant/Respondent begun to construct permanent buildings in addition to drilling a borehole.
71. The Plaintiff/Applicant submits that since it is the registered owner of the suit parcel, it has therefore established that it has a *prima facie* case.
72. The Plaintiff/Applicant has attached to its affidavit in support of the application a copy of the Certificate of Lease for land parcel No. **Bomet Township/270** issued to Lomu Investment on 15th May, 2017.
73. The Lessor is the County Government of Bomet and the lease is for a term of 99 years from 1st January, 1997. It also states that Lomu Investment was registered as the owner on 15th December, 2003 and was issued with the Certificate of Lease on 16th May, 2017.

- 74.** The Plaintiff/Applicant has also attached a copy of a Certificate of Official Search for land parcel No. **Bomet Township/270** issued on 4th October, 2017. It states that Lomu Investments was registered as the owner on 15th December, 2003 and was issued with a Certificate of Lease on 16th May, 2017.
- 75.** The 1st Defendant/Respondent in response contends that it is the registered owner of land parcel No. **Bomet Township/437.**
- 76.** The 1st Defendant/Respondent also contends that the alleged acts of trespass are actually being undertaken on land parcel No. **Bomet Township/437.**
- 77.** The 1st Defendant/Respondent submits that even though the Plaintiff/Applicant is the registered owner of the suit parcel, the said registration was obtained fraudulently.

- 78.** The 1st Defendant/Respondent also submits that the issue of the Plaintiff/Applicant's ownership of the suit parcel was determined in Kericho ELC Case No. 78 of 2012 Bomet Technical Institute Limited T/A Lomu Investment v Joel Ruto & 22 Others.
- 79.** The 1st Defendant/Respondent further submits that the judgement delivered in the said matter has been stayed pending appeal which appeal is yet to be heard and determined.
- 80.** It is the 1st Defendant/Respondent's submissions that the suit parcel is in possession of St. Michael's primary School.
- 81.** From the documents attached to the Plaintiff/Applicant's affidavit in support of the application, it is evident that the Plaintiff/Applicant is the registered owner of the suit parcel.

82. That being the case, it is the view of this Court that the Plaintiff/Applicant has established a *prima facie* case.

83. The second condition for grant of orders of temporary injunction is that the Plaintiff/Applicant must demonstrate that it will suffer irreparable injury that would not be adequately compensated by way of damages.

84. In **Nguruman Limited v. Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal pronounced itself as follows:

“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an

unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

(Emphasis mine)

85. The judicial decision in **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR** provides an explanation of what is meant by irreparable injury. It is as follows;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of

a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury. (Emphasis mine)

- 86.** The Plaintiff/Applicant submits that the 1st Defendant/Respondent trespassed onto the suit parcel and dug a borehole.
- 87.** The Plaintiff/Applicant also submits that the 1st Defendant/Respondent's actions may lead to irreversible alteration or loss of value in land.
- 88.** The Plaintiff/Applicant also submits that damages will not restore its title or its peaceful enjoyment which has been unlawfully interfered with.

- 89.** The 1st Defendant/Respondent submits that the Plaintiff/Applicant has not shown what loss he is likely to suffer.
- 90.** Taking the circumstances of this case into consideration, it is my view that the Plaintiff/Applicant has not demonstrated that it will suffer irreparable damage which cannot be adequately compensated by way of damages if the orders sought are not granted.
- 91.** If after making considerations on the existence of a *prima facie* case and irreparable injury the Court is still in doubt, then an application for temporary injunction is to be determined on the basis of balance of convenience.
- 92.** In the present matter, the Plaintiff/Applicant has demonstrated that it has a *prima facie* case but it has not demonstrated that it will suffer irreparable damage which cannot be adequately compensated by way of damages if

the orders sought are not granted. I will therefore determine this application on a balance of convenience.

93. In Pius Kipchirchir Kogo v Frank Kimeli Tenai (supra)

the Court held as follows;

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other

words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it. (Emphasis mine)

94. In **Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 others [2016] eKLR** the Court while considering the question of balance of convenience expressed itself thus;

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately

turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the Court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance of convenience lies.” (Emphasis mine)

- 95.** The Plaintiff/Applicant contends that it is in possession of land parcel No. **Bomet Township/270.** The Plaintiff/Applicant also contends that the 1st Defendant/Respondent has trespassed on the said parcel of land and begun to construct permanent buildings and has dug a borehole.

96. In response, the 1st Defendant/Respondent denies being in possession of land parcel No. **Bomet Township/270** and it instead contends that it is St. Michael's Primary School that is in possession.

97. The 1st Defendant/Respondent also contends that the alleged acts of trespass complained off are being undertaken on its parcel of land **No. Bomet Township/437**.

98. This Court notes that both the Plaintiff/Applicant and 1st Defendant/Respondent are challenging, as against each other, the legality of title documents held by each of them and/or the extent of land held by each of them.

99. Given the said circumstances, it is my view that the balance of convenience does not tilt in favour of the Plaintiff/Applicant.

100. The Plaintiff/Applicant have therefore failed to meet the threshold for the grant of an order for temporary injunction.

Disposition.

101. The upshot of the foregoing is that the Plaintiff/Applicant's application dated 3rd March, 2025 lacks merit and it is hereby dismissed with costs.

102. However, noting that it may be important to preserve the subject matter of any suit pending hearing and determination, and further noting that **Section 3A** of the **Civil Procedure Act, Section 13** of the Environment and Land Court Act and **Practice Direction No. 28(k)** of the Practice directions of this Court contained in Gazette Notice No. 5178 dated 25th July, 2014 give powers to this Court generally and specifically to make orders for the preservation of the subject matter of any suit, I hereby issue orders as follows;

a. The status quo obtaining as at the date of this ruling shall be maintained pending the hearing and determination of this suit.

b. For the avoidance of doubt, parties herein are prohibited from constructing, charging and/or transferring land parcel No. Bomet Township/270 and/or doing all and any activities whose effect shall be to alter the physical or legal status of the suit land pending the hearing and determination of this suit.

103. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 16TH DAY OF OCTOBER, 2025.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

Parties- Absent

Court Assistant; Mr. Joseph Makori.