

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. E027 OF 2025

COUNTY GOVERNMENT OF TRANS
NZOIA-----PLAINTIFF/RESPONDENT

VERSUS

JAPHETH LOTUKOI EKIDOR-----

1ST DEFENDANT

PHILIP OKOTH OKUNDI-----**2ND**

DEFENDANT/APPLICANT

JOYCE MOKEIRA-----

3RD DEFENDANT

SARAH KAATHO-----

4TH DEFENDANT

CHIEF LAND REGISTRAR-----

5TH DEFENDANT

RULING

1. By a ruling dated **23/7/2025**, the court declined to issue temporary orders in favour of the plaintiff against the defendants herein. The 2nd defendant by an application dated **19/8/2025**, seeks:

(a) ...spent

(b) ...spent

(b) Pending hearing and determination of this suit, the plaintiff, its servants, agents and or police officers acting on instructions from the plaintiff, be restrained by temporary injunction from entering upon, trespassing on, excavating, wasting, constructing, continuing with construction of any perimeter wall or any structures, or in any other manner interfering with the 2nd defendant's quiet possession or interest on Land Title Nos. Kitale Municipality Block 6/161 and 162.

(d) The County Commander, Trans Nzoia, to ensure compliance with the orders herein.

2. The reasons are contained on the face of the application and in a supporting affidavit of Philip Okoth Okundi, sworn on **19/8/2025**. It is deposed that the applicant is the registered owner of title No. **Kitale Municipality Block 6/161** and **162** as per annexed certificate of lease and that on **19/8/2025**, the plaintiff mobilized armed police officers from Kitale and Matisi Police Stations and unleashed over **500** goons wielding crude weapons who violently and unlawfully invade Title Numbers **Kitale Municipality Block 6/236, 237, 238, 165, 164, 162, and 161**, destroyed standing maize crops, commenced construction of a perimeter wall fence, demolished houses on adjacent plots and looted livestock and

household good items, with a view of dispossessing him and the co-defendants from their land, by force, impunity and total disregard of the law through abuse of police powers. The applicant has attached a bundle of copies of ID, certificate of lease, lease documents, ruling, and photographs as annexure marked **POO- (1)**.

3. The applicant deposes that, unless restrained, the plaintiff will proceed with the unlawful construction, which will permanently alter the character of his land and cause him irreparable loss and prejudice. The applicant deposes that the conduct of the plaintiff amounts to contempt of court, trespass, and abuse of police power.
4. The applicant relies on written submissions dated **5/9/2025**. Reliance is placed on **Mrao Ltd -vs- First American Bank of Kenya [203] KLR 125, Nguruman Ltd -vs- Jan Bonde Neilsen [2014] eKLR,** and **Giella -vs- Cassman Brown [1973] EA 358,** that, going by the title documents attached, a **prima facie** proof of ownership is established under **Section 26(1)** of the Land Registration Act. It is submitted that the plaintiff's acts of trespass and

arbitrary deprivation of property are against **Article 40** of the Constitution.

5. The primary pleading by the 2nd defendant is the statement of defence and counterclaim dated **20/8/2025**, which appears unfiled.
6. Whereas the applicant alleges trespass and encroachment of its parcels of land by the plaintiff, the only evidence annexed is that of unverified photographs. There is no evidence attached to show the nature, extent, and particulars of encroachment or trespass. There are no valuation reports, survey map, or Land Registrar's report to sustain the applicant's allegation that there have been acts of trespass as defined under **Section 3(3)** of the Trespass Act.
7. As regards averments that the police and hired goons descended on the properties and caused acts of destruction, again, matters bordering on criminality are reported through OB reports so that the investigative agencies can take up the issue. The applicant has not attached any such reports where he has asked the security agencies to investigate the same with a view to apprehending the culprits.

8. A prima facie case refers to one where, from the material presented, a right has been infringed or violated to call for a rebuttal from the opposite side. Irreparable damage is one that cannot be quantified in monetary terms. It must be real, imminent, apparent, and evident. Mere apprehension or fear is not enough. See **Mrao Ltd -vs- First American Bank of Kenya Ltd** (*supra*) and **Nguruman Ltd vs- Jan Bonde** (*supra*). Balance of convenience arises where the inconvenience to the applicant in the absence of an injunction outweighs that likely to be suffered by the respondent if the injunction were to be issued and the suit is ultimately dismissed. See **Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai [2018] KEELC 2424 (KLR)**.
9. Where the right is not in dispute but the injury or violation is contested, the court strives to take the lower risk to preserve the status *quo*. See **Films Rover International Ltd -vs- Cannon Film Sales Ltd [1987]**
10. In the circumstances, the court finds that the applicant has failed to meet the three tests to be entitled to temporary orders of injunction.

11. The application dated **19/8/2025** is dismissed with costs.

12. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **15th** day of **October 2025**.

In the presence of:

Court Assistant - Dennis

Teti for Kimani for the Applicant - present

Situma for Busiega for plaintiff /Respondent - present

1st Respondent - (Deceased)



**HON. C.K. NZILI
JUDGE, ELC KITALE.**