



County Government of Trans-Nzoia v Wanyonyi & 53 others (Environment and Land Case E035 of 2025) [2025] KEELC 6618 (KLR) (1 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6618 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E035 OF 2025**

CK NZILI, J

OCTOBER 1, 2025

BETWEEN

COUNTY GOVERNMENT OF TRANS-NZIOA PLAINTIFF

AND

ISAIAH WANYONYI & 53 OTHERS & 53 OTHERS & 53 OTHERS & 53 OTHERS DEFENDANT

RULING

1. What is before court is an application dated 23/7/2025, where the applicant is seeking temporary and permanent orders of injunction to restrain the respondents, their agents, servants, employees and/or those claiming through them, from logging indigenous trees, destruction of natural flora, subdividing, fencing, erecting illegal structures and/or in any other manner, interfering with land title number Kitale Municipality Block 7/358 (the suit land), within Kitale Township, pending hearing of this application and the suit.
2. The grounds relied on by the applicant are that it took over the management and operations of all the facilities relating to Kitale Museum, following an intergovernmental agreement dated 6/2/2024, between it and the National Government, through the National Museums of Kenya. The applicant avers that the National Museums of Kenya is the bona fide owner of the suit land, where the respondents have, without any justification, been logging indigenous trees, destroying natural flora, fencing, and erecting illegal structures thereon, to the detriment of the applicant.
3. The applicant further avers that there is a need for the court to issue restraining orders against the respondents, to prevent wastage of the assets of the applicant, as it stands to suffer irreparably, if the orders sought are denied. Again, the applicant avers that it is in the interest of justice that the court grant the orders sought.



4. In the affidavit sworn on 23/7/2025 by Truphosa Amere, the Chief Officer of Lands, Housing, Physical Planning and Urban Development of the applicant, she reiterates the above grounds and attaches the agreement dated 6/2/2024, the letter of allotment, and the part development plan as annexures marked TO 1 - 2(a) and (b).
5. The deponent also avers that the respondents are trespassers on the suit land and their continuous occupation and destruction of the suit land are prejudicial to the applicant. Further, she deposes that the respondents shall not be prejudiced if the orders sought are granted.
6. Despite the service, the respondents have yet to file their responses.
7. The applicant relies on written submissions dated 30/8/2025. Reliance is placed on Order 40 Rule 1, *Giella - v- Cassman Brown & Co. Ltd* [1973] EA 35, *Nguruman Limited - v- Jan Bonde Nielsen & 2 Others* [2014], *Mrao Ltd - v- First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, *Kenleb Cons Ltd - v- New Gatitu Service Station Ltd & Another* [1990] KLR 557, *Park Towers Ltd - v- John Mithamo Njika & 7 others* [2014] eKLR and *Owino-Uhuru Residents Association & 2 Others - v- Attorney General & 7 Others* Supreme Court Petition 1 of 2020.
8. The applicant submits that environmental protection is a constitutional and statutory imperative. Articles 42, 69, and 70 of the *Constitution* entrench the right to a clean and healthy environment and impose duties to protect and conserve it; courts are enjoined to fashion effective remedies to forestall or redress environmental harm. On a prima facie face, the applicant submits that it has demonstrated a clear, protectable interest in the suit land. It has established proprietorship of the suit land by the National Museums of Kenya, and therefore, a right that has been infringed and warrants protection.
9. Further, the applicant submits that the respondents' acts of logging indigenous trees, destroying flora, illegal subdivision, fencing, and construction, constitute trespass and waste under Order 40 Rule 1 of the *Civil Procedure Rules*, yet the respondents are not licensed or issued with a consent from the proprietor or the mandated manager of the applicant.
10. Regarding irreparable loss, the applicant submits that indigenous trees and natural flora lost to illegal logging are not readily replaceable; the ecological value, amenity, heritage, and character of museum grounds are unique and not susceptible to precise monetary quantification.
11. The applicant, relying on *Nguruman Limited - v- Jan Bonde Nielsen (supra)*, submits that the court emphasized that where the damage is inadequately compensable in damages, interlocutory injunctions issue to avert the harm. Environmental harm is frequently cumulative and irreversible, warranting ex ante restraint, rather than ex post damages, an approach the Supreme Court endorsed in *Owino-Uhuru Residents Association & 2 Others - v- Attorney General (supra)*, recognizing the need for effective remedies to protect environmental rights.
12. The applicant submits that if doubt exists, the balance of convenience favours preservation, by granting the interim injunction to maintain the status quo ante and prevent further subdivision or construction, which would prejudice restoration and complicate the trial.
13. A temporary injunction is an interim court order that serves to preserve the status quo to prevent harm; it either requires a party to do or stop doing an act, pending the merit hearing of a suit. A permanent injunction, on the other hand, is a final court order issued after a suit has been heard and evidence reviewed. Order 40, Rule 1 provides for instances where temporary injunctions are issued. Where, in any suit, it is proved by affidavit or otherwise:-
 - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or



- b. That the defendant threatens or intends to remove or dispose of his property in circumstances according reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit, until the disposal of the suit or until further orders.
14. The principles of granting an injunction were set out in the case *Giella - v- Cassman Brown & Co. Ltd (supra)*, which are:-
- i. An applicant must show a prima facie case with a probability of success.
 - ii. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury.
 - iii. When the court is in doubt, it will decide the application on the balance of convenience.
15. The applicant is asking the court to issue both a temporary and a permanent injunction in the interim. It alleges that the respondents are committing acts of trespass, destruction, logging, subdivision, and fencing without any justification or consent. It has annexed an agreement on the transfer of the attendant assets and collections relating to Kitale Museum.
16. The allotment letter dated 1/12/1999 speaks of the proposed amalgamation of the National Museums Site- Kitale Municipality, and a title was to be issued upon acceptance of the conditions therein and payment of prescribed charges. It is therefore imperative that, upon fulfilling the said conditions, a title be issued that the applicant has not attached.
17. The National Museums of Kenya was established by the [National Museums and Heritage Act](#) of 2006 and is mandated to collect, preserve, study, and present the country's cultural and natural heritage for the benefit of present and future generations. Museums fall under devolved functions of the County Governments under Part 2 Clause 4(g) of the Fourth Schedule.
18. The applicant has, however, not attached photographs showing the alleged destruction, fencing, and or survey reports showing the extent of the trespass by the respondents. Be that as it may, there is no justification for the respondents to commit acts of destruction as alleged. It is the mandate of the applicant and the National Museums of Kenya to ensure the preservation and protection of natural heritage. The alleged destruction by the respondents, if left to continue, will cause irreparable harm to the loss of cultural and natural heritage and thus go against the very spirit of the [Constitution](#). Similarly, the balance of convenience tilts in preserving the status of the suit land.
19. Issuing a permanent injunction at this stage of the suit shall not be prudent, having in mind that the respondents are yet to file their pleadings and evidence is yet to be adduced and evaluated. Nonetheless, the justice of this application demands issuance of a temporary injunction to last for one (1) year only, from the date hereof.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 1ST DAY OF OCTOBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:



Court Assistant - Dennis

Teti for Kimani for respondents present

Nabwile for applicant present

