



**Katunge (Suing as the Legal Representative of the Estate of Josiah Musau Nzomo (Deceased)) & 2 others v Lonzi & 3 others (Environment and Land Case E041 of 2024) [2025] KEELC 6849 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6849 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND CASE E041 OF 2024  
EO OBAGA, J  
OCTOBER 9, 2025**

**BETWEEN**

**RUTH KATUNGE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOSIAH MUSAU NZOMO (DECEASED)) ..... 1<sup>ST</sup> PLAINTIFF  
OBADIAH ELLIS HINGA NGETHE ..... 2<sup>ND</sup> PLAINTIFF  
SUSAN KAVULI KINGOO MUSIMBA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**FESTUS MWANIKI LONZI ..... 1<sup>ST</sup> DEFENDANT  
LAND REGISTRAR MAKUENI COUNTY ..... 2<sup>ND</sup> DEFENDANT  
DIRECTOR OF LAND ADJUDICATION & SETTLEMENT, MINISTRY OF LANDS & PHYSICAL PLANNING ..... 3<sup>RD</sup> DEFENDANT  
THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the Notice of Motion dated 6<sup>th</sup> December, 2024 brought under the provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act* in addition to Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules, 2010. The Plaintiffs/Applicants seeks issuance of the following orders: -
  1. [Spent]
  2. [Spent]
  3. That a temporary injunction be issued restraining the Defendants herein by themselves, servants, agents and/or whomsoever claiming through them from trespassing, farming,



alienating, offering for sale, selling, charging, transferring and/or in any manner whatsoever interfering with the Plaintiffs' ownership and peaceful possession of land Parcel No. 158 Kiboko B Settlement Scheme measuring 1.77 hectares pending the hearing and determination of the main suit.

4. That the OCS Makindu Police Station be ordered to ensure compliance of the orders issued in this application.
5. That costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Susan Kavuli Kingoo Musimba sworn on even date on her behalf and that of her Co-plaintiffs. The deponent averred that the 1<sup>st</sup> Plaintiff's deceased husband (Josiah Nzomo) was the bona fide owner of all that property known as Plot No. 151 Kiboko B Settlement Scheme after the land was offered to him by the 3<sup>rd</sup> Defendant through a letter of offer dated 15/11/2005. She added that Josiah Nzomo also got a letter of acceptance dated 22/5/2012 after being issued with a receipt for booking fees dated 3/5/2012.
3. The deponent averred that Josiah Nzomo paid the outright purchase price of Kshs.14,000/= that was due to the Settlement Fund Trustees as at 19/10/2012. She further averred that Josiah Nzomo sold the suit property to the 2<sup>nd</sup> Plaintiff vide a sale agreement dated 30/4/2012 for Kshs.300,000/= with the authority and knowledge of the 3<sup>rd</sup> Defendant. That the signed documents between Josiah Nzomo and the 2<sup>nd</sup> Plaintiff were forwarded to the 3<sup>rd</sup> Defendant through its officers working in Kibwezi vide a letter dated 16/7/2013.
4. It was averred that the 2<sup>nd</sup> Plaintiff later sold the suit property to the deponent at a consideration of Kshs.1,360,000/= and through the sale agreement dated 17/1/2017. The deponent averred that at the time when she was purchasing the suit property, the 1<sup>st</sup> Plaintiff informed her that she had been living therein with her family for over twenty years peacefully. She added that upon being shown all the documents by the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, she visited the 3<sup>rd</sup> Defendant's offices at Kibwezi where she learnt that the suit property did not have any dispute and that it was at the titling stage in favour of the 2<sup>nd</sup> Plaintiff.
5. The deponent stated that after purchasing the suit property, she embarked on fencing the land and also growing pasture for her cattle. That in or about March 2024, the 1<sup>st</sup> Defendant sent goons who destroyed part of the fence claiming ownership of the suit property and forcing her to substitute the barbed wire with twigs. She added that the said goons also destroyed some of the structures in the suit property. When the deponent reported the matter to the lands office at Kibwezi, she was informed by the 3<sup>rd</sup> Defendant that the land had been paid for without any further disclosure.
6. She deponed that upon further enquiries at the land registry in Wote Town, she discovered that the name of the 1<sup>st</sup> Defendant had been entered into the land register on 13<sup>th</sup> December, 2022 and a title deed issued in his name on the same date. The deponent added that recently, the 1<sup>st</sup> Defendant and his agents have been threatening to invade the suit property so as to evict them. She averred that that I the orders sought are not granted, then the 1<sup>st</sup> Defendant will forcefully evict them resulting in irreparable harm and damage.
7. Opposing the application, the 1<sup>st</sup> Defendant filed a replying affidavit sworn by himself on 5<sup>th</sup> March, 2025. He averred that he purchased the suit property from Mwangangi Masila vide the sale agreement dated 25<sup>th</sup> May, 2013. That Mwangangi Masila was the beneficial owner of the suit property having purchased it from Charles Muia Masila who was the original allottee of the land. The 1<sup>st</sup> Defendant



- annexed copies of the letter of offer dated 12<sup>th</sup> July, 2007 and the letter of acceptance dated 10<sup>th</sup> November, 2010 in the names of the 1<sup>st</sup> Defendant.
8. He averred that he took possession of the suit property immediately after purchase. The 1<sup>st</sup> Defendant averred that together with the seller, they visited the lands office at Kibwezi and the suit property was re-allocated to him vide the letter of offer dated 10<sup>th</sup> June, 2013 which he duly accepted vide the letter of acceptance dated 14<sup>th</sup> June, 2013. He averred that he paid the outright purchase price of Kshs.11,210/=.
  9. The 1<sup>st</sup> Defendant deponed that on 25/8/2021, the suit property known as Makueni/Kiboko B/151 was discharged and transferred by the Land Settlement Fund Board of Trustees to him. That after making a follow-up on the registration process, the suit property was registered in his name on 13/12/2022 and a title deed was issued.
  10. The 1<sup>st</sup> Defendant averred that the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs have never set foot on the suit property and that the 3<sup>rd</sup> Defendant began trespassing on the land in the year 2024. He further averred that upon warning her that her actions were unwelcome, the 3<sup>rd</sup> Plaintiff proceeded to lodge a complaint with the Directorate of Criminal Investigations (DCI) Makindu Sub- County, she was advised to keep off the suit property.
  11. The 1<sup>st</sup> Defendant averred that the present application is an attempt by the 3<sup>rd</sup> Plaintiff to have him evicted from the suit property and hence the court should await the hearing of the main suit so that the Plaintiffs' evidence can be tested in cross-examination. He urged the court to dismiss the application with costs.
  12. In a further affidavit sworn by the 3<sup>rd</sup> Defendant on 4<sup>th</sup> April, 2025, she averred that the 1<sup>st</sup> Defendant's process of acquiring the suit property was marred by fraud and misrepresentation of facts. She reiterated that the Plaintiffs have demonstrated that they are in occupation of the suit property and that are also cultivating the land for pasture and have established residences for their workers.
  13. The 3<sup>rd</sup> Plaintiff averred that the 1<sup>st</sup> Defendant had not annexed evidence of him being in possession of the suit property, and it was only when he attempted to gain forceful entry that the Plaintiffs came before court. She urged the court to issue orders preserving the suit property.
  14. The 2<sup>nd</sup> – 4<sup>th</sup> Defendants did not file their respective replies in respect of the present application.
  15. The application was canvassed by way of written submissions.
  16. In the Plaintiffs' submissions dated 7<sup>th</sup> April, 2025, Counsel submitted that the jurisdiction of this court to issue injunctive orders is provided for under Order 40 Rule 1 of the Civil Procedure Rules. Counsel contended that suit property was offered to Josiah Nzomo (Deceased) through a letter of offer dated 15/11/2005 and that he later got a letter of acceptance dated 22/5/2012. Counsel further contended that the 1<sup>st</sup> Plaintiff's late husband made the requisite payments by 19/10/2012 and that he was in the process of transferring the suit property to the 2<sup>nd</sup> Plaintiff's. Counsel reiterated that the transfer process had been approved by the 3<sup>rd</sup> Defendant's representatives.
  17. Counsel contended that the letter of offer that was issued to Charles Muia Musila was issued about two years after the other one had been issued to Josiah Nzomo, and that no single payment was done by the Defendants until 14/6/2023. Counsel opined that the Plaintiffs had established a prima facie case and that they have a legal right to continue in possession of the suit property pending determination of the issue of ownership of the suit property.



18. Submitting on irreparable injury, Counsel contended that the Plaintiffs had been in possession of the suit property for over 20 years without any interference from the Defendants until the year 2024. It was further contended that the Plaintiffs have fenced the suit property where they grow pasture and feed their cattle. Counsel insisted that the 1<sup>st</sup> Defendant had not presented any evidence of being in actual occupation of the suit property or that the orders sought would cause his eviction. It was submitted that the Plaintiffs would suffer irreparable injury if the orders sought are not granted.
19. Submitting on balance of convenience, Counsel asserted that the Plaintiffs are living and using the suit property for their sustenance and that it is imperative that they be protected until the suit is heard and determined. Counsel urged the court to allow the application as prayed.
20. In the 1<sup>st</sup> Respondent's submissions dated 26<sup>th</sup> May, 2025, Counsel submitted that the Plaintiffs had not demonstrated a prima facie case in that their offer letter lapsed before payment of the required fees had been made. Therefore, the suit property was not available for allocation to the Plaintiffs. Counsel was of the view that having failed to surmount the hurdle of proving a prima facie case, the Plaintiffs were ineligible for an award of the orders sought. It was urged that the application should be dismissed with costs.
21. The sole issue for determination is whether the Plaintiffs/Applicants have met the legal threshold for issuance of the injunctive orders sought.
22. The prerequisite conditions for a grant of injunctive orders under Order 40 Rule 1(a) of the Civil Procedure Rules, 2010 were determined in the celebrated case of *Giella v Cassman Brown & Co Ltd* [1973] 1 EA 358 at 360 (CAK) as follows: -

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be 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. (*E.A. Industries v. Trufoods*, [1972] E.A. 420.)”
23. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR the Court of Appeal defined a prima facie case in the following terms: -

“4. A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
24. A perusal of the evidence in the instant application reveals that the suit property Plot No. 151 is located in Kiboko “B” Settlement Scheme within Makueni County. Both the Plaintiffs and the 1<sup>st</sup> Defendant derive their respective ownership claims to letters of offer and letters of acceptance issued to them by the 3<sup>rd</sup> Defendant through the Settlement Fund Trustees.
25. The Plaintiffs' letter of offer is dated 15/11/2005 whereas, the 1<sup>st</sup> Defendant's letter of offer is dated 12/07/2007. The Plaintiffs' letter of acceptance is dated 22/5/2012 whereas the 1<sup>st</sup> Defendant's letter of acceptance is dated 10<sup>th</sup> November, 2010. The Plaintiff annexed payment receipts marked as Exhibits “SKKM 4” and “SKKM5” for the months of May and October 2012 showing that indeed payments were collected by the 3<sup>rd</sup> Respondent as consideration for the suit property. Again, the Plaintiffs



- annexed additional documents supporting their claim to the suit property being an application for consent to transfer the suit property, the consent to transfer the suit property and a stamp duty payment receipt that were forwarded to the 3<sup>rd</sup> Respondent.
26. On the other hand, the 1<sup>st</sup> Defendant annexed copies of a discharge of charge and a transfer form both dated 25<sup>th</sup> August, 2021 and issued to him by the 3<sup>rd</sup> Defendant. He averred that on the strength of the said documents, the 2<sup>nd</sup> Defendant issued him with a title deed on 13<sup>th</sup> December, 2022 which was annexed as Exhibit “FML4”.
27. The Plaintiffs assert that there was an element of fraud and misrepresentation in the issuance of a title deed to the 1<sup>st</sup> Defendant which informs their prayer for cancellation of the 1<sup>st</sup> Defendant’s title deed.
28. Seeing that both parties carry competing claims to the suit property, this Court is satisfied that a prima facie case raising arguable issues against the Defendants has been made by the Plaintiffs.
29. The Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR opined as follows: -
- “...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”
30. The Plaintiffs averred that they have been in possession of the suit property for more than twenty years. To support that averment, they produced photographs depicting the suit property as fenced with barbed wire, cows and goats grazing therein and physical housing structures as Exhibits “SKKM10” and “SKKM11”.
31. Conversely, the 1<sup>st</sup> Defendant did not produce any evidence to ascertain his claim of occupation of the suit property since the year 2013.
32. It is the finding of this court that the Plaintiffs have established that they will suffer irreparable harm ensuing from the 1<sup>st</sup> Defendant’s actions should the invasion of the suit property go unchecked.
33. In *Julius Kuria Nganga v Wambui Kigamba* [2017] eKLR, the Court held as follows: -
- “Further, the court will also take into account that at this stage the court is not called upon to determine the very issues with finality but only to find out if the Applicant has established that he deserved the orders sought basing it on the laid down criteria. See the case of *Edwin Kamau Muniu vs Barclays Bank of Kenya Ltd Nairobi (Milimani)* High Court, Civil Case No.1118 of 2002, where the court held that:
- “in an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled to at that stage is whether the Applicant is entitled to an injunction sought on the usual criteria”.



34. Lastly, since the Plaintiffs have established possession of the suit property, even though the 1<sup>st</sup> Defendant is the registered owner thereof, an inquiry has to be made into the validity of their respective claims. Thus, the balance of convenience rests in keeping the status quo of the suit property in place as the respective ownership claims are investigated and evidence adduced during the trial of the case.
35. The upshot of the foregoing is that the Plaintiffs have demonstrated merit in the instant application which is hereby allowed in terms of prayers 3 and 4. Costs shall abide the final outcome of the suit.

.....

**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

In The Presence Of:

Ms. Singi for Plaintiffs/Applicants

Mr. Mathura for 1<sup>st</sup> Defendant/Respondent

Ms. Momanyi for Ms. Lungu for 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants/Respondents.

Court assistant – Steve Musyoki

