



Lochab & another v Allibhai & another (Environment and Land Case E019 of 2025) [2025] KEELC 6779 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6779 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE E019 OF 2025**

**CK YANO, J
OCTOBER 9, 2025**

BETWEEN

NARINDER SINGH LOCHAB 1ST APPLICANT

AMARJIT SINGH LOCHAB 2ND APPLICANT

AND

MOHAMED IQBAL KURBANALI ALLIBHAI 1ST RESPONDENT

LAND REGISTRAR UASIN GISHU COUNTY 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 12th March, 2025 and filed under certificate of urgency, the Plaintiffs/ Applicants sought the following orders: -
 1. Spent.
 2. Spent.
 3. That in the interim and pending the hearing of this suit this honourable court do issue a temporary order of injunction restraining the defendants whether by themselves, their agents, servants or anybody claiming under them from interfering with the plaintiffs' possession, occupation and use of the parcel of land No. Eldoret Municipality/ Block 12/46 or from transferring, leasing, disposing or in any other way dealing with the parcel of land No. Eldoret Municipality/ Block 12/46.
 4. The OCS Langas Police Station do ensure compliance of these orders.
 5. Costs of this Application be borne by the defendants/respondents.
2. The application is based on the 5 grounds on the face thereof and on the Supporting Affidavit sworn by the 1st applicant on even date, on his own behalf and on behalf of the co-applicant.



3. He stated that he is a joint owner/proprietor of the suit land L.R. No. Eldoret Municipality/ Block 12/46 (hereinafter referred to as the suit land) together with his brother, the 2nd applicant, and holder of a Certificate of Lease, which he annexed in his affidavit.
4. He deponed that the 1st defendant laid a claim over the suit land and land parcel No. Eldoret Municipality/ Block 12/33 claiming ownership, at the office of the National Land Commission sometimes 31.01.2019. Consequently, they were summoned to appear before the Land Registrar Uasin Gishu County on 26.06.2019.
5. That upon examination of the documents and records at the lands registry and hearing of both parties, a determination was made that the applicants' documents were legitimate and that they had acquired their leases to the suit land and land parcel No. Eldoret Municipality/ Block 12/33 legally from the lessor, one Kurbanali Alibhai.
6. It is his claim that sometimes around 25.02.2025, they were shocked to learn that the suit land had been transferred to the 1st defendant and a Certificate of Lease dated 02.11.2024 issued in his favor.
7. He further contended that the search conducted at the Uasin Gishu lands registry revealed that the title to the suit land had changed hands and the 1st defendant was now the owner of the suit land and annexed the copy of the certificate of lease.
8. The applicants claim that they had no notice from the respondents or knowledge on how the 1st respondent caused himself to be registered as the proprietor of the suit land whereas they were the registered legal proprietors of the suit land.
9. He asserted that the 1st respondent has no document to legitimize the transfer of the suit land from them and the said transaction should be deemed as fraudulent, illegal, null and void ab initio.
10. It is the applicants' claim that the 1st respondent has since issued them with a notice, threatening them with eviction and if not restrained may proceed to illegally evict them and cause them substantial loss as a result.
11. He also averred that there is a risk of the 1st respondent transferring the suit land to unsuspecting third parties and thus urged the court to grant the orders sought.
12. In response to the Replying Affidavit sworn by the 1st defendant, the applicants filed a Further Affidavit sworn by 1st applicant dated 16.05.2025, on his own behalf and on behalf of the 2nd applicant.
13. In the Further Affidavit, the 1st applicant averred that the fact that the 1st respondent's late father Kurbanali Alibhai Noor Mohammed left a will dated 14.01.1992 has no bearing to the suit land and cannot be used as a basis/way to change their bonafide ownership rights as lessees of the suit land.
14. He reiterated that the dispute in respect to ownership of the suit land was resolved by the parties sometimes in the year 2019.
15. He further averred that from the record, it is evident that from the certificate of lease that the lessor Kurbanali Alibhai Noor granted a lease to Naranjan Singh Lochab for a period of 999 years. Subsequently, the said lease was inherited by Narinder Singh Lochab and Amarjit Singh Lochab by way of succession. He thus maintained that the applicants are therefore the rightful lessees of the suit land.
16. He accused the 2nd respondent of acting irregularly and illegally in issuing a certificate of lease to the 1st respondent despite knowing that the applicants also held a valid certificate of lease in respect of the same land.



17. It was the 1st applicant's contention that the annexure attached to the 1st respondent's Replying Affidavit is proof that the 1st respondent used dubious means to have the suit land registered in his name on the 2nd November, 2024, which date fell on a Saturday, when land registries are closed for business.
18. Further, that the 1st respondent abused the court process by misleading the court in High Court Nairobi Succession Case No. 418 of 1992 in granting orders which enabled him to fraudulently register himself as the lessee of the suit land.
19. He deponed that the elements of fraud are evidenced by the purported allotment letters in respect of the suit land and parcel No. Eldoret Municipality/ Block 12/155; which are indicated to have been issued on the same day by the same officer but the signatures on them are clearly different.
20. That in addition, the order in High Court at Nairobi Succession Case No. 418 of 1992 was issued on 19.11.2024 when in fact, at the said time, the 1st respondent had been issued with a certificate of lease.
21. In conclusion, he maintained that all the conditions necessary for the grant of injunction had been met and urged the court to allow the application as sought.
22. The application was opposed. The 1st Respondent filed a Replying Affidavit sworn on 1st April, 2025, denying all the allegations raised by the applicants. He stated that the suit parcel originally belonged to his father and annexed a copy of the Letter of Allotment dated 30.04.1979, issued by the Ministry of Lands.
23. It was his claim that his late father died in the early 1990s and left a valid will dated 14.01.1992. Consequently, a succession cause was filed vide Nairobi Succession Cause No. 418 of 1992; in the Matter of the Estate of Kurbanali Alibhai Noor Mohamed, wherein the 1st respondent and his brother were appointed the executors of the said Will and thereafter a Certificate of Confirmation of Grant as per the deceased will dated 14.01.1992 was issued on the 25.09.1992.
24. It was further his claim that the suit land herein formed part of the estate of his late father and the same was evidenced by the Certificate of Confirmation of Grant and which lists him as the sole beneficiary of the estate.
25. It is his contention that the plaintiffs/applicants have been unlawfully occupying the suit parcel and efforts to have them vacate the suit property have fell on deaf ears and/or efforts to recover the land have been futile.
26. That subsequently, he filed an application dated 23/11/2023 at the High Court Milimani, seeking to compel the Registrar to register the suit parcel in his name in full compliance of the Certificate of Confirmation of Grant issued on 25.09.1992.
27. That the said application was heard and determined vide a Ruling issued on 21.11.2024 vide the Milimani Succession Cause No. 418 of 1992 and whose effect was to order that the suit parcel be registered in the name of the 1st respondent as the sole beneficiary of the estate.
28. He therefore maintained that the plaintiffs/ applicants have no color of right to claim ownership pf the suit land and further that they had not provided any material proof that they are the bonafide and registered owners of the suit land or how they acquired the same land which formed part of the estate of his late father.
29. He thus urged the court to dismiss the application for temporary injunction for the reason that the applicants had not demonstrated a prima facie case that they are the legal and registered owners of the suit land and accused the applicants of going to court with unclean hands.



30. He added that in the interest of justice and fairness, the court should dismiss the application with costs.
31. The Application was disposed of by way of written submissions. Both parties filed their written submissions. The applicants filed their submissions dated 20.05.2025 together with authorities while the 1st respondent filed his submissions dated 19.05.2025 together with authorities, which I have read and considered.

Analysis and Determination:

32. I have carefully considered the application herein, the various affidavits in support of the application and in response thereto together with the rival submissions and the authorities outlined therein. In view of the foregoing, the main issue arising for determination is whether the Applicants have met the requirements for the grant of an order of temporary injunction as sought.
33. Order 40 (1) (2) of the Civil Procedure Rules governs the grant of temporary injunction and provides as follows: -
 1. 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;
 - (b),
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.”
34. Section 13 (7) (a) of the *Environment and Land Court Act*, 2015 further empowers this court to grant interim preservation orders including an interim order of injunction as sought herein.
35. The principles governing the grant of injunctions are well settled. An applicant seeking orders of injunction is under a duty to satisfy the 3 principles set out in *Giella vs Cassman Brown and Co. Ltd* [1973] EA. 358 at 360 where the court held as follows: -
 - a). where he is required to demonstrate that he has a prima facie case with serious triable and arguable issues with a probability of success against the respondent. The test on prima facie case does not mean establishing a case beyond reasonable doubt;
 - b). He will suffer irreparable harm/injury which cannot be adequately compensated by damages;
 - c). Balance of convenience: In granting an injunction under this condition the court must be satisfied that the hardship or inconvenience which is likely to be caused to the applicant by declining the injunction will be greater than that which is likely to be caused to the respondent.
36. These 3 principles outlined above are to be applied as separate, distinct and logical hurdles which an applicant is expected to prove sequentially. The existence of one element alone does not automatically entitle an applicant to an order of injunction without considering the other elements. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86.



37. The first element is whether the applicants have established a prima facie case which raises arguable and triable issues with a probability of success.
38. The Court of Appeal in *Mrao Ltd vs. First American Bank of Kenya and 2 Others* (2003) KLR 125 explained what amounts to a prima facie case and stated as follows:
- “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.”
39. I have carefully considered the rival positions presented by both parties. At the center of the dispute herein is the ownership of the suit land. Both parties contend that they are the rightful owners of the said land.
40. It is common ground that the suit land is currently registered in the name of the 1st respondent who holds a certificate of lease. The onus is however on the applicants to demonstrate that they have a prima facie case, which is genuine and arguable and there exists a right which has been infringed by the defendants/respondents.
41. It is the applicants’ claim that they are the rightful and bonafide owners of the suit land and have been occupying and using the land for over 40 years; the certificate of lease thereto having been registered jointly in their favor vide transmission. They tendered an explanation and history on how the suit land was registered in their names and how the 1st respondent’s deceased father transferred the suit land in favor of their late father.
42. They further annexed a copy of the certificate of lease which clearly showed that the suit land was registered in their joint names as Entry No. 4 and 5. They also annexed a copy of a letter dated 01.03.2025 from Seko Minayo Advocates asking them to vacate and demolish any structures on the suit land within 3 days in support of their possession, occupation and use claims.
43. They also annexed copies of the lease and certificate of official search in support of their ownership claims and to show the efforts and steps taken by the parties in trying to resolve the ownership dispute and the verdict made therein which affirmed that they are the rightful owners and certificate of lease they held declared valid.
44. The 1st respondent on the other hand, annexed a copy of the certificate of lease issued on 02.11.2024 in support of his ownership claims. It is his claim that the suit land was registered in his name by virtue of transmission, being the only beneficiary to his father’s estate, pursuant to an order issued by the High Court in Nairobi Succession Cause No. 418 of 1992.
45. It is interesting to note that the order which the 1st respondent alleges to have been used as a basis of his registration as the owner of the suit land was issued on the 21.11.2024 whereas the certificate of lease produced by the 1st respondent and the certificate of official search shows that registration was effected on 02.11.2024, which is before the order was issued. This therefore raises questions which can only be answered at the substantive hearing of the suit.
46. Further, the 2nd respondent, who is the custodian of all land records and documents, despite being served with the application did not file any response to shed more light on Entry No. 7 and 8, and the validity of the certificate of lease held by the 1st respondent.



47. In view of the foregoing, it is the finding of this court that the applicants have satisfactorily demonstrated that they have a prima facie case against the respondents to the required standard.
48. The second element is that the applicants must demonstrate the irreparable loss and injury that they are likely to suffer and which cannot be adequately compensated by an award of damages unless an order of injunction is granted. The applicants are under a duty to demonstrate the nature and extent of the irreparable loss and harm they are likely to suffer.
49. It has been held that an injury is irreparable where there is no standard by which an amount can be measured with reasonable precision and accuracy or is in such a nature that monetary compensation, of whatever amount, will never be an adequate remedy. Thus, speculative injury or unfounded fear does not amount to an irreparable injury.
50. The Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] Eklr, while defining what amounts to an irreparable injury held 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.”
51. In an effort to demonstrate the nature of harm and injury they are likely to suffer unless the orders sought are granted, the applicants stated that they have been in occupation of the suit parcel for a period of over 40 years and have also been conducting businesses.
52. Further, they annexed a copy of a letter dated 01.03.2025 from the 1st respondent’s advocate demanding that they vacate the suit premises and demolish all the structures on the suit land.
53. The applicants are also apprehensive that the 1st respondent may proceed to sell the suit parcel to unsuspecting third parties and they produced a copy of a letter dated 28.02.2025 in support of these claims.
54. The 1st respondent did not deny the applicants’ occupation, possession and use of the suit land but only accused the applicants of fraudulently, irregularly and illegally having the suit land registered in their names.
55. In their Supporting Affidavit and/or Further Affidavit, the applicants did contend that they were threatened with eviction if they continued with the activities that they were carrying out on the suit land. Indeed, if the threatened eviction is carried out and/or if the 1st Respondent proceeds to sell the suit land to third parties, no doubt the applicants are likely to suffer irreparable injury, and the suit rendered nugatory.
56. Consequently, it is the finding of this court that the Applicants have demonstrated the irreparable loss that they are likely to suffer that cannot be compensated by an award of damages to the set standard.



57. The final element is on the balance of convenience. The court needs to be satisfied that the inconvenience likely to be caused to the Applicant by declining the injunction is greater than that which is likely to be caused to the Respondents. The court is called upon to balance the inconveniences of both parties and possible injuries to them and their properties.

(See Charter House Investment Limited vs Simon K. Sang and 3 Others [2010] eKLR. In my view, it is only just to maintain the status quo prevailing to preserve the suit property pending the hearing and determination of the suit.

58. In the totality of the foregoing, it is my finding that the balance of convenience lies in favor of the applicants and in granting the orders of temporary injunction as sought.

Costs:

59. The general rule is that costs follow the event unless the court directs otherwise.

60. Consequently, having held that the applicants have satisfactorily proved their claim for orders of temporary injunction against the respondents to the required standard, I find that they are entitled to the costs of the application.

Conclusion:

61. In view of the foregoing, I find that the Notice of Motion Application dated 3rd February, 2025 is merited and is hereby allowed on the following terms;

I. An Order of temporary injunction be and is hereby issued, restraining the defendants whether by themselves, their agents, servants or anybody claiming under them from interfering with the plaintiffs' possession, occupation and use of the parcel of land No. Eldoret Municipality/ Block 12/46 or from transferring, leasing, disposing or in any other way dealing with the parcel of land No. Eldoret Municipality/ Block 12/46 pending the hearing and determination of this suit.

II. The OCS Langas Police Station be and is hereby directed to ensure compliance of these orders.

III. Costs of this Application be borne by the defendants/respondents.

62. It is so ordered.

DATED, SIGNED and DELIVERED in ELDORET this 9TH day of OCTOBER, 2025.

HON. C. K. YANO

ELC, JUDGE

Ruling delivered in the virtual presence of: -

Ms. Obura holding brief for Mr. Seko for 1st Defendant /Respondent

Mr. Kariuki Mwaniki for Plaintiff/Applicant.

Court Assistant – Laban

