



**Mohamed v Ahmed (Environment and Land Case E062 of 2024)
[2025] KEELC 6641 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6641 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE E062 OF 2024**

CK YANO, J

OCTOBER 2, 2025

BETWEEN

JAMAL ABDALLAH MOHAMED PLAINTIFF

AND

MOHAMED AHMED DEFENDANT

RULING

1. This ruling determines the Plaintiff/Applicant's Notice of Motion dated 18th October, 2024 where he seeks the following orders:
 1. Spent
 2. Spent
 3. That this Honourable court be pleased to issue temporary injunction orders restraining the Defendant/Respondent, his agents, servants, workers or any person working under his instruction herein from making use of, alienating, selling interfering or dealing with all that parcel of land known as Land Parcel No. 8545 Chepkatet Eldoret Municipality (hereinafter referred to as "the suit property") pending the hearing and determination of the main suit.
 4. That the Officer Commanding Station Langas Police Station to ensure compliance of this order.
 5. That this court be pleased to issue any order that it deems fit to grant to meet the ends of justice.
 6. That costs of this Application be provided for.
2. The Application is supported by the Plaintiff's Affidavit of even date. The Plaintiff's case is that he and the Defendant are siblings and beneficiaries of the suit property. He deponed that they obtained an order from the Succession Court to subdivide the land and he has a joint share with the Defendant in



- a clear demarcated land measuring approximately 26 Acres. That upon the Defendant's release from prison, he has been selling family property and showing people around the suit land intending to sell it.
3. The Plaintiff avers that he lodged a complaint with the authorities but it was never acted upon. The Plaintiff depones that he also reported the matter to the Village elder and the area chief, and the matter was even heard by a group of 15 elders who directed the parties to take the dispute to the family elders, thus he opted to file this suit. He urged that since the issue was not being solved, he lodged a caution over the suit property to protect his interests.
 4. The Plaintiff further depones that it is in the interest of justice that the orders herein do issue pending determination of the main suit. He stated that the Defendant will suffer no harm if the orders are granted, and that instead it would create peace on the land and avoid bloodshed. He asked that they be allowed to have equal shares so that each can benefit from the suit property. He asked that the application be allowed.
 5. In his Replying Affidavit dated 29th January, 2025, the Defendant claimed that the prayers sought were based on hearsay, speculations and the Plaintiff's imagination. He alleged that the Plaintiff had not demonstrated that he intended to sell the land, neither had the plaintiff shown that a complaint had been lodged against him for being a nuisance on the suit land. He explained that there is an active Appeal between him, the Plaintiff and the other siblings, being Eldoret High Court Appeal No. 84 of 2024 over the suit property herein, which is yet to be determined.
 6. The Defendant explained that the Appeal touches on the mode of distribution of their deceased father's estate and the Plaintiff ought to have known that fact before filing this suit. He deponed that the Application does not meet the threshold for grant of the orders sought. He denied that any complaint was lodged against him or that he was ever summoned by the Area Chief or the elders over the suit land. He asked that the Application be dismissed for want of merit.

Submissions:

7. The court directed that the application be canvassed by way of written submissions. The Plaintiff complied and filed his submissions dated 28th April, 2025. However, as at the time of writing this Ruling, the Defendant had not complied with the Court's directions.

Plaintiff's Submissions;

8. In the Plaintiff's submissions, Counsel submitted that the principles applicable in an application for injunction were laid out in *Giella vs Cassman Brown & Co Ltd* (1973) EA 358 and *Mourice Muthiani vs Harrison Mulinge Waivati & Another* (2022) eKLR. He submitted that a party must show a prima facie case with a possibility of success, which concept was defined in the case of *Mrao vs First American Bank of Kenya Limited & 2 Others* (2003) eKLR. On this requirement, Counsel urged that the Plaintiff has a valid and strong claim to the land. That the land belongs to the parties herein who hold it jointly and by virtue of the order of subdivision.
9. Counsel submitted that one must also show that they stand to suffer irreparable harm if the injunction is not granted (*Nguruman Ltd vs Jan Bonde Nielsen & 2 Others* (2014) eKLR). Counsel submitted that the Defendant has shown his intention to dispose of the land and the only way to prevent the same is to grant the orders sought. Counsel also submitted that the Plaintiff has a right under Article 40 and 65 to acquire and own property either individually or in association with others. That this right is under threat from the Defendant despite the subdivision order, whose action are aimed at violating the Plaintiff's rights. Counsel urged that the balance of convenience thus favours the Plaintiff. Counsel



relied on *Ochola Kaamili Holdings Ltd vs Guardian Bank Ltd* (2018) eKLR and *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (2018) eKLR.

10. Counsel further submitted that this suit is not res judicata Eldoret High Court Civil Appeal No. 84 of 2024 for reason that the Appeal emanated from Eldoret Kadhi Succession Cause No. 13 of 2011, and neither the parties nor the issues are similar. On costs, Counsel argued that the Defendant had made the Plaintiff incur unnecessary costs in litigating this application thus the Plaintiff ought to be awarded the costs thereof. Counsel relied on the cases of *Party of Independence Candidate of Kenya vs Mutula Kilonzo & 2 Others* (2013) KEHC 5939 (KLR), *Julius Irungu Wairia v Lilian Kagwiria* (2018) eKLR, *Morgan Air Cargo Limited vs Everest Enterprises Limited* (2014) eKLR and *Reid, Herwitt & Co vs Joseph*, Air 1918 Cal 717 and *Myers VS. Defries* (1880) 5 EX D 180.

Analysis and Determination:

11. Having considered the application, the response thereto and the submissions filed, the main issue for determination is whether the Plaintiff's application seeking injunctive relief, is merited.
12. I must, however, point out that the Plaintiff in his submissions raised the issue of whether the suit was *res judicata*. I have not seen anywhere that the Defendant claimed the suit herein is *res judicata*. The said issue was never raised in the Application or the response thereto. In fact, the Defendant only brought to the attention of this court the existence of an active Appeal before the High Court here at Eldoret touching on the suit land herein. That being the case, the submissions on that front are misguided and/or misdirected.
13. Turning now to the issue of the temporary injunction, the case of *Giella vs Cassman Brown & Co Ltd* (1973) EA 358 set the following conditions for the grant of a temporary injunction:

“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.”
14. The first requirement is that the Applicant must show that they have a prima facie case with a probability of success. As to what amounts to a prima facie case, the Court of Appeal, in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* (2003) KLR 123 held 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 in which on the material presented to the Court or 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.”
15. In the instant Application, the Plaintiff claims the land as a beneficiary, and has indicated that the land is to be shared between him and the Defendant herein pursuant to an Order of Subdivision granted by the Kadhi's Court.
16. The Order of Subdivision made in 2011 states clearly that every son was to be given 8 Acres of Plot No. 8545, the suit land herein. The order listed a total of 5 sons, including the Plaintiff and the Defendant herein. The 6 daughters of the deceased on the other hand were to each get 4 Acres. However, the Plaintiff made it sound like there were only two people entitled to the suit land, being just the Defendant and him. In truth, the two of them are only entitled to 16 acres in total and not 26 acres as alleged by the Plaintiff.



17. Be that as it may, the judgment of the Kadhi delivered on 29th June, 2011 is now being challenged through Eldoret High Court Civil Appeal No. 84 of 2014. A copy of the Memorandum of Appeal has been annexed and it is evident that the judgment of the Kadhi's Court is being challenged on several grounds including the genuine heirs of the deceased as well as the mode of distribution of the deceased's estate.
18. The Plaintiff has made it very clear that his claim and/or interest over the suit property is by virtue of the subdivision order obtained from the succession court. And seeing as the said order of subdivision now seems to be under attack in the Appeal pending before the High Court, then the Plaintiff's claim that he is entitled to use the land to the exclusion of the defendant is misplaced.
19. If anything, going by the said order of subdivision, there are a total of 11 beneficiaries to the said estate. The Defendant is one of these beneficiaries, and before the suit land is actually subdivided and each party allocated their own portion of the estate, they all, as beneficiaries, are entitled to the land herein.
20. For this reason, I do find that the Plaintiff has not proved that he has a prima facie case with a probability of success. I would say his entitlement to the suit property is still hanging on a balance until such a time as the High Court shall render itself on the Appeal pending before it.
21. The second requirement is that an Applicant must demonstrate that he stands to suffer irreparable injury if the injunction sought is not granted. Irreparable injury was defined in the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR 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.”
22. The Plaintiff herein claimed that the Defendant has been taking people to the land with the intention of selling it. He claims to have lodged a complaint to the relevant authorities over the same. He has annexed bundle of letters that are purported to prove his allegations. I have read the said letters and seen no proof of this alleged intention on the part of the Defendant to sell the suit property. The earliest letter written by the Plaintiff is dated 20th January, 2024 and addressed to Ms. Rebecca Kogo, the Area Chief. In that letter, the Plaintiff through his advocates on record demanded that the Area Chief cease making decisions over the suit land.
23. Vide letter dated 29th April, 2024 and addressed to the County Commissioner, Uasin Gishu County, the Plaintiff refers to the issues of security and legal ownership of the suit property. In this letter, the Plaintiff only mentions a brother that had been arrested and then returned to the land, but did not mention the Defendant's name. In the same letter, the Plaintiff accused one Ms. Salma Ali of illegally occupying the land. In an email to IPOA, Eldoret Office dated 29th July, 2024 the Plaintiff decried the ongoing harassment by criminal gangs and he listed numerous OB numbers, none of which has specifically been linked to the Defendant.
24. In another email dated 10th December, 2024 addressed to the Area Chief Rebecca Kogo, the Plaintiff accused one Mrs. Salma Ali of being the one interfering with the suit land. On the same day, the Plaintiff also wrote an email to the Ombudsman, detailing various complaints of insecurity and stolen cattle, and in that letter he again accused Salma Ali of colluding and/or conspiring with the Area Chief and other individuals to steal cattle on the suit land. Once again, the Defendant was not adversely mentioned in this letter.



25. It would be remiss of me to not point out that it is the Defendant that came clean and told this court of the pending Appeal on the succession judgment. It is highly unlikely that being so aware of the pending Appeal, and having been truthful with this court as the Defendant has, to imagine that he intends to sell the land before the Appeal is heard and determined.
26. Moreover, in most of these letters, the Plaintiff refers the Defendant as a co-owner of the land and it is only in this suit that he seems to now be claiming otherwise. There was no single allegation in those correspondences that the Defendant was bringing potential buyers to the suit land as alleged.
27. It is trite that where substantial/irreparable harm is alleged, one must go the extra mile of proving it. Nothing in the Plaintiff's application or the annexures has me convinced that the Defendant has threatened or intends to sell the suit land or any portion thereof, or even that he has been a nuisance on the land. The Plaintiff has thus failed to prove that he stands to suffer irreparable harm if the order is not granted.
28. The last requirement is that if the court is in doubt, then it should decide the application on a balance of convenience. As already stated, the Plaintiff and the Defendant herein are two among a total of 11 beneficiaries to the suit land. The land is still not sub-divided due to the pending appeal lodged against the judgment of the Kadhi's Court's decision.
29. Before the suit property is subdivided, all the beneficiaries have an equal right to it and none of them can claim to be more entitled over the others. As one of the beneficiaries of the suit property, the Defendant is equally entitled to the use of the suit land. For that reason, the balance of convenience cannot lie in awarding an order that will disinherit the other beneficiaries before the court determines the entitlement of each of the beneficiaries under succession.
30. In *Nguruman Limited vs Jan Bonde Nielsen and 2 Others* (2014) eKLR, the Court of Appeal held as follows:-

“These are the three pillars on which rests 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.”
31. In this instance however, the Plaintiff has failed to meet all the three prerequisites for the grant of an injunction. As a result, the Plaintiff's application must fail.

Orders:

32. In the circumstances, the application dated 18th October, 2024 is without merit and the same is dismissed with costs to the Defendant.
33. Orders accordingly.

DATED , SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 2ND DAY OF OCTOBER , 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Mr. Mwazighe for the Plaintiff.



No appearance for the Defendant.

Court Assistant - Laban.

