



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyanya v Rayori & 4 others (Land Case E034 of 2024)  
[2025] KEELC 7087 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7087 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
LAND CASE E034 OF 2024  
E ASATI, J  
OCTOBER 14, 2025**

**BETWEEN**

**SAMUEL OTIENO NYANYA ..... PLAINTIFF**

**AND**

**PHOEBE ORIDO RAYORI ..... 1<sup>ST</sup> DEFENDANT**

**BETTY MAKOKHA ..... 2<sup>ND</sup> DEFENDANT**

**ERICK ODHIAMBO RAYORI ..... 3<sup>RD</sup> DEFENDANT**

**CHEPKOECH EVERLINE RUTO ..... 4<sup>TH</sup> DEFENDANT**

**DAVID JUMA RAYORI ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. Vide the Notice of Motion dated 22nd September, 2025, the Plaintiff sought for orders that:
  - a. An order of temporary injunction do issue restraining the Defendants/Respondents, their servants, employees, contractors or any third party claiming through them from continuing with the construction, commissioning or operation of a petrol station on land parcel known as Kisumu/Kanyakwar "A"/112 pending the hearing and determination of the suit.
  - b. The court issues an order allowing the Plaintiff/Applicant ingress into the suit property for purposes of retrieving, preserving and/or securing his installations and developments including but not limited to underground fuel tanks, pump dispensers, canopy structures, shop fittings, signage and associated business assets pending the hearing and determination of the suit.
  - c. The court issues an order of temporary injunction restraining the Defendants/Respondents from utilizing or deriving commercial benefit from the Plaintiff's developments on the suit



property including through lease or licensing arrangement with petroleum companies such as Shell or others pending hearing and determination of the suit.

- d. Such further orders the court may deem just and expedite in the circumstances.
  - e. Costs of the application be borne by the Respondents.
2. The application was supported by the contents of the Supporting Affidavit sworn by the Applicant on 23<sup>rd</sup> September, 2025 and the annexures thereto.
  3. The application was opposed vide the grounds of opposition contained in the Replying Affidavit of Erick Odhiambo Rayori sworn on 29<sup>th</sup> September, 2025 and the annexures thereto.
  4. The Respondent's case is that the application is misplaced and an abuse of the process of the court. That the application is a duplication of the application dated 18<sup>th</sup> June, 2025 hence the same is sub judice.
  5. That although the Applicant claims to have bought the suit land the Respondents were not party to the sale agreement which agreement was illegal and designed to disinherit the Respondents as beneficiaries of their grandfather's estate.
  6. That the purported sale of the suit property between the 1<sup>st</sup> Defendant and the Plaintiff/Applicant was a criminal act of intermeddling with the property of the deceased. The Applicant should not be allowed to benefit from his own criminal conduct.
  7. That the Respondents have managed to regain control of the property. That the petrol station was put up by Lexo Energy who have since surrendered the property to the Respondents after a court case namely; Winam Elc No. E038 OF 2024 was decided in favour of the Respondents.
  8. That to the extent that the Applicant in his main suit is seeking the refund of the purchase price from the 1<sup>st</sup> and 5<sup>th</sup> Respondents, no irreparable injury will be visited upon the Applicant to warrant grant of an order of injunction.
  9. The application was heard on 30<sup>th</sup> September, 2025. It was submitted on behalf of the Applicant that the Applicant stands to suffer irreparable harm if the application is not allowed. That a third party has entered the property and is operating a business. That there is loss of commercial control. That the Applicant is seeking that the substratum of the suit, which is the infrastructure on the land, be preserved.
  10. That the infrastructure is worthy Kshs.47,000,000/-. That the Applicant has a prima facie case with a probability of success and that the current application has been brought on the basis of new facts – that there is a third party who has entered the suit land to use the Applicant's infrastructure.
  11. On behalf of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, it was submitted that the application offends the provision of section 6 of the *Civil Procedure Act* as it is sub judice to the application dated 18<sup>th</sup> June, 2025 pending before court.
  12. That the Applicant has not demonstrated irreparable injury or prima facie case. That the sale of the property to the Applicant was cancelled vide a Succession cause and that the property is now jointly owned by all the Defendants. That the balance of convenience tilts in favour of the registered owners.
  13. I have considered the application and the grounds of opposition thereto. The substantive relief sought is for an order of temporary injunction. As laid down in the case of Giella -vs- Casman Brown, the grounds for grant of an order of temporary injunction are firstly that the Applicant must demonstrate a prima facie case with a probability of success.



14. The Applicant's case is that the infrastructure on the suit land belong to him and that he spent a colossal sum of money namely 47,000,000/- to install the same pursuant to a land sale agreement vide which he bought the suit land. He claims that a third party has now entered the suit land and is using the said infrastructure.
15. According the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents, the sale of the suit land to the applicant was unlawful as it was done before succession to the estate of the deceased registered owner of the land and that the sale was nullified vide a Succession Cause.
16. Indeed the green card exhibited by the Applicant shows that vide orders obtained in Succ Cause No 789 Of 2016 Cmc Kisumu the entries on the register in respect of the suit land in regard to registration of the suit land in the name of Phoebe Rayori, subsequent transfer of the suit land to the applicant, issuance of title to the applicant, lease to Lexo Energy and a charge duly registered were all cancelled. The suit land is now registered in the names of the Respondents.
17. The orders sought are meant to restrain a third party who is now said to be operating a business on the premises and using the Applicant's infrastructure. No evidence has been availed to prove this. The third party has not been made a party in the proceedings so that any orders issued by the court may be binding on him/her.
18. I find that a prima facie case with a probability of success has not been demonstrated. The applicant has another application dated 18<sup>th</sup> June, 2025, similar to the present application, pending hearing which application is similar to the present application. Although Counsel for the applicant submitted that the present application was necessitated by new facts, the applications are essentially similar.
19. The second ground for grant of temporary injunction is that irreparable injury will result to the Applicant if the order sought is not granted. From the material placed before court, possession and ownership of the suit land appears to have left the Applicant's hands through court decisions firstly, in the succession and secondly in the Winam court case No E038 of 2024. There is no evidence that any appeal has been preferred against these decisions or that the decisions have been set aside.
20. In the plaint the Applicant has claimed refund of the amount of money he used to develop the premises in addition to refund of the purchase price. If his claim succeeds, no irreparable injury will be suffered.
21. The court finds that the Applicant has not demonstrated the grounds for grant of an order of temporary injunction.
22. The application is dismissed. Each party to bear own costs of the application.

Orders accordingly.

**RULING READ AND SIGNED AT KISUMU AND DELIVERED THIS 14<sup>TH</sup> DAY OF OCTOBER, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Owuor for the Plaintiff/Applicant.

Omondi for the Respondents/Defendants.

