



REPUBLIC OF KENYA



Wamocha & another v Wamocha & 2 others; Malaba & 2 others (Interested Parties) (Environment and Land Case E017 of 2025) [2025] KEELC 6970 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6970 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E017 OF 2025**

CK NZILI, J

OCTOBER 15, 2025

BETWEEN

KENBILL WAMOCHA 1ST PLAINTIFF

ECB (SUING AS NEXT OF KIN AND MOTHER TO AJB) 2ND PLAINTIFF

AND

ELIZABETH MURUGI WAMOCHA 1ST DEFENDANT

VENUS NAMSYA 2ND DEFENDANT

ABRAHAM MWANGI 3RD DEFENDANT

AND

STEPHEN SHIKUKU MALABA INTERESTED PARTY

KENNEDY TANUI KAZI INTERESTED PARTY

PASCAL MAYENDE INTERESTED PARTY

RULING

1. Before the court is an application dated 18/3/2025. The plaintiff/applicant seeks:
 - (1) ...spent
 - (2) Temporary injunction restraining the respondents, their agents, servants, or employees from selling, transferring, disposing, alienating, interfering, or in any other way dealing with I.R. No. 166XXXX pending the hearing and determination of this suit.
 - (3) Status quo be maintained pending hearing and determination of this suit.



- (4) The Chief Land Registrar to restrict I.R No. 166XXXX to prevent any transactions, including sale, transfer, subdivision, or any dealings thereof, without the express authority of the court.
2. The reasons are set out on the face of the application and on a supporting affidavit of Kenbill Wamocha, sworn on 18/3/2025. The applicant deposes that on 17/2/2015, through an amended certificate of confirmation of grant, relating to his grandfather, his late Wilson Juma Makete (deceased) was given 37 acres in L.R. No. 166XXXX, which was registered in the names of EC, Elizabeth Murunga and Wilkista Namemba Juma, to hold in trust for his three children as per the annexed amended grant, certificate of death and birth certificates marked KW-3(a),(b), and (c).
 3. The applicants depose that EC was to hold 1.26 acres in trust for Annan Juma, Elizabeth Murunga to hold 12.6 acres in trust for Venus Namysa and Wilkista Namaemba Juma to hold 11.26 acres for the deponent.
 4. The applicant deposes that on 26/11/2016, the grandmother Wilkista N. Juma passed on living two trustees as per the attached death certificate marked KW-4 and contrary to their wishes, as children of the late Watson Wamocha Makete, Elizabeth Wamocha and her daughter Venus Namsya have started disposing part of the trust property, to among others the 3rd respondent, and in September 2023, the 1st respondent granted the 1st plaintiff a lease of 8 out of the 11 acres which she holds in trust for the 2nd respondent and he paid consideration as per annexures marked KW-4(a), (b), and (c).
 5. The applicant deposes that the acts of the respondents are unlawful, and constitute a violation of and the infringement of their proprietary rights and interests as beneficiaries to I.R No. 166XXXX (L.R. No. 174/50), in terms of the location of each child's share, hence the interim reliefs sought.
 6. The application is opposed by a replying affidavit sworn by Elizabeth Murugi Wamocha, the 1st defendant, on 9/5/2025. She admits that I.R No. 166XXXX is currently registered in trust in the joint names of EC, Wilkista Namaemba (deceased) and herself, which trust is that they hold an equal share of 12.33 acres, contrary to the assertion in paragraph 5 of the supporting affidavit.
 7. The 1st defendant depose that the 2nd respondent, who is her daughter, has since attained 18 years and that there is a legal framework to follow in any disposal of trust property or demand for a portion of the trust property, which the applicant does not want to follow, for he has leased out substantial part of the trust land to Kenya Seed Company to plant maize seed.
 8. The 1st defendant deposes that the suit property is still subject to trust law principles and as a trustee, she has a fiduciary duty to manage the same for the benefit of all the beneficiaries in accordance with the law, otherwise, the allegation of any purported disposal trust property, which requires court sanction and proper trust administration is not only misleading, unsubstantiated and intended to cast aspersions on her role, yet all her actions have and shall continue to be done in good faith and in the best interest of the beneficiaries.
 9. The 1st defendant deposes that a huge portion of the suit property was leased out by the 1st applicant to Kenya Seed Company without proper administration of the law of trust, and the proceedings thereof are only enjoyed by him.
 10. The 1st defendant deposes that she has only leased out 3 acres out of 37 acres to cater for the school fees of the 2nd respondent. The 1st defendant deposes that the only money that she received from the 1st applicant was part of the proceeds he has been receiving from Kenya Seed Company, meant for a daughter who is a beneficiary.



11. Therefore, the 1st defendant terms the application as brought through unclean hands; otherwise, the 1st applicant is the only one enjoying the cake to the detriment of all other beneficiaries, including the 2nd defendant.
12. The 1st defendant deposes that it could be in the interest of justice if the subject land is distributed equally among the three beneficiaries so that the two who have attained the age of majority can be allowed to own their respective shares, whereas the remaining beneficiary is a minor, her share to continue being held by her mother, the 2nd applicant.
13. The 1st defendant terms the application as brought in bad faith, without any consultation, and with the resultant effect of interfering with her ability to discharge fiduciary duties as a trustee, despite a resolution in a meeting held at the chief's office by all the parties on the way forward.
14. In a supplementary affidavit sworn on 3/6/2025, the 1st applicant deposes that the late Watson Wamocha Makete is the one who entered into land sale agreements with the third parties, with the 1st defendant as a signatory as per annexed copies marked KW-1(a), (b), and (c).
15. It is deposed that after deducting the acres sold to third parties, each of the beneficiaries will be entitled to 11.26 acres, and not 12.6 acres; hence, it was a clerical error. The 1st applicant deposes that he only uses 5 acres of land for maize farming, the rest of 5 acres being on sugarcane farming, otherwise, he denies leasing onto any land to Kenya Seed Company, save that he has a contract with them to plant maize seed on 25 acres of the trust land as per annexure marked KW-2, which according to him is the computation of 11 acres held in trust for him.
16. The 1st applicant insisted that the 1st defendant has sold a substantial portion of the land as per the photos attached as annexure KW-3, showing demarcation beacons. The 1st applicant deposes that he has only sent part of the proceeds to James Nyongesa Makete, a custodian of Annan Juma Bosco, as per the statement and screenshots attached as KW-4(a) and (b).
17. The 1st applicant deposes that he has made correspondence with the 1st respondent regarding the lease, use, and payments for the 8 acres leased to him as per screenshots messages marked as KW-5.
18. The primary pleadings in this suit are the plaint dated 18/3/2025 and the 1st, 2nd and 3rd defendants' joint defence dated 5/8/2025. In the plaint, the plaintiff's main prayer is the dissolution of the trust, subdivision of the trust property, a portion of the trust property measuring 3.2 acres out of the trust property measuring 38.22 acres goes to the interested parties, sharing of the rest among the beneficiaries, invalidation of any illegal sales, transfers or disposals of any portion of it to third parties, and declaration that the 1st plaintiff occupies 8 acres as a lease of the trust property for a period of 5 years with effect from September 2023.
19. The defendants deny the contents of the plaint in toto. In particular, they deny that the third parties are lawful purchasers of the alleged 3.2 acres of the suit property. Other than averring that the suit property is held in trust under the joint names, the applicant has not attached copies of the official search certificate and or a copy of the register to show the registration status for the suit land.
20. There is nothing that has been attached to verify that the plaintiffs are beneficiaries of the estate of the late Wilson Juma Makete, following transmission of the suit property to the joint names of the trustees in line with the amended certificate of confirmation of grant dated 17/2/2015.
21. A party seeking temporary orders of injunction must demonstrate a prima facie case with a probability of success at the hearing, indicate that it will suffer irreparable loss in the absence of injunctive orders, and lastly, that the balance of convenience tilts in favour of granting the orders sought.



22. A prima facie case arises where a right has been violated or infringed to call for an explanation from the party who has been sued. See *Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR).
23. Irreparable damage must be real, apparent, imminent, and not imagined. It must be one incapable of quantification monetarily. See *Nguruman Limited -vs- Jan Bonde Nielsen & another* [2017] KEHC 6131 (KLR). Balance of convenience is where the inconvenience of not granting the orders of injunction will be suffered more by the applicant than the respondent if no injunction is granted. See *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* [2018] eKLR.
24. In assessing whether a prima facie case is established, the court does not conduct a mini-trial but sees if the applicant has an arguable question or issue to raise at the main hearing. An applicant need not establish title, but a bona fide interest or a question of fact or law.
25. The bottom line in this matter is that the suit property is trust land in nature held by the trustees in favour of the 1st and 2nd plaintiffs and the 2nd defendant. The law governing trust property is the *Trusts of Land Act*, Cap 290, Laws of Kenya. The subject land became trust property according to the 1st plaintiff by virtue of the amended certificate of confirmation of grant. The power to sell, exchange, lease, rent, and dispose of trust property is governed by Sections 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, and 29 of the Act. The management of trust property is governed by Section 22 thereof.
26. All the above powers, duties and obligations of the trustees fall under the general power of the court under Sections 33 and 55 of the Act and Sections 13, 17, and 55 of the Trustees Act.
27. Under Section 61(2)(a) of the *Land Registration Act*, upon the amended certificate of grant, the legal representatives to the estate were supposed to perfect the registration of the trust by way of transfer by transmission. Perfection, as indicated above, would be confirmed through a certificate of official search or a copy of the records. An application by beneficiaries to a trust has to be brought under Order 37 Rule 2 of the Civil Procedure Rules.
28. What is before the court is not an originating summons but a normal suit. In the absence of a proper procedure and an annexure to show the current status of the subject land, the court finds that the applicants have failed to meet the conditions for the grant of a temporary injunction, let alone for inhibition orders. The application is dismissed with costs.
29. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 15TH DAY OF OCTOBER 2025.

In the presence of:

Court Assistant – Dennis

Mr. Kadja for Baringo for Applicant - present

for the 1st and 2nd Respondents – present

HON. C.K. NZILI

JUDGE, ELC KITALE.

