



REPUBLIC OF KENYA



KENYA LAW
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**Langat v Langat (Environment and Land Case E017 of 2025)
[2025] KEELC 5722 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5722 (KLR)

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

**LA OMOLLO, J
JULY 31, 2025**

BETWEEN

LEAH CHEBII LANGAT PLAINTIFF

AND

JOSEPHINE LANGAT DEFENDANT

RULING

Introduction

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 11th March, 2025. It is expressed to be brought under Order 40 Rules 1 & 4 of the [Civil Procedure Rules](#) and Section 3A of the [Civil Procedure Act](#).
2. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the present suit this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendant/Respondent by herself, agents, servants and or employees or otherwise from trespassing onto, selling, alienating and/or in any other manner interfering with or otherwise dealing with the property known as Kericho/Kapsuser/7993.
 - d. That the OCS Kapsoit Police Station do ensure compliance of the said orders.
 - e. That cost of the application be provided for by the Respondent.
3. The application is based on the grounds on its face and the supporting affidavit of one Leah Chebii Langat sworn on 11th March, 2025.



Factual Background.

4. The Plaintiff/Applicant commenced the present proceedings vide the Plaint dated 11th March, 2025 where she seeks the following prayers;
 - a. An order of permanent injunction restraining the Defendant, their [*sic*] agents, servants, workmen and agents [*sic*] from interfering on and/or from erecting or causing to be erected thereon any structures, or from in any way interfering with the Plaintiff's use and enjoyment of a [*sic*] Kericho/Kapsuser/7993.
 - b. An order of eviction of the Defendant from the Plaintiff's suit property.
 - c. An order directing the OCS Kapsoit Police Station to demolish all the structures erected on the Plaintiff's parcel of land be demolished and enforce the Plaintiff's quiet use and possession of the suit property. [*sic*]
 - d. Costs of this suit and the interest at the Court's rate.
 - e. Any other relief that this Honourable Court may deem suit [*sic*] to grant.
5. As at the time of writing of this ruling, the Defendant/Respondent had not filed her Statement of Defence.
6. The application under consideration first came up for hearing on 17th March, 2025 when the Court directed that the application be served upon the Defendant/Respondent.
7. On 30th April, 2025 the application was reserved for ruling.

The Plaintiff/Applicant's Contention.

8. The Plaintiff/Applicant contends that the Court in Succession Cause No. 100 of 2012 issued an order for subdivision of the parcel of land belonging to the deceased and adds that the land was to be subdivided between herself and the Defendant/Respondent as they were wives of the deceased.
9. The Plaintiff/Applicant also contends that the said subdivision was done and she was issued with a title deed for her portion of the said land.
10. The Plaintiff/Applicant further contends that any attempt to farm and/or use her parcel of land has been met with resistance from the Defendant/Respondent. She goes on to state that the suit parcel is her only source of income.
11. It is her contention that the Defendant/Respondent together with her sons and goons have resorted to violence and they use crude weapons on anyone who comes near the suit parcel.
12. It is also her contention that the Defendant/Respondent has violently resisted her attempts to utilize her [Plaintiff/Applicant] parcel of land. She goes on to state that the Defendant/Respondent has planted tea bushes on the suit parcel and there is always a possibility of being attacked if she [Plaintiff/Applicant] comes anywhere close to her land.
13. It is further her contention that she needs the assistance of the Police to ensure her safety and peace in fencing off her parcel of land and adds that she has no express orders to do so.
14. She ends her deposition by stating that the Officer in Charge Kapsoit Police Station, the Officer Commanding Police Station and/or Officer Commanding Police Station Kapsoit should be given express orders to ensure compliance of the said order. [*sic*]



15. The Defendant/Respondent did not file any response to the application and neither of the parties filed their submissions.

Analysis and Determination.

16. I have considered the Plaintiff/Applicant's application and the only issue that arises for determination is whether the Plaintiff/Applicant has met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.
17. In the judicial decision of *Giella v Cassman Brown* [1973] EA 358, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;
- “The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a *prima facie case* with probability of success. Secondly an interlocutory injunction will not be normally 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.”
18. The Plaintiff/Applicant must first establish a *prima facie case*. A *prima facie case* was defined in the judicial decision of *Mrao Limited v First American Bank of Kenya & 2 Others* [2003] eKLR as follows;
- “A *prima facie case* in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”
19. The Plaintiff/Applicant contends that she is the registered owner of land parcel No. Kericho/Kapsuser/7993.
20. The Plaintiff/Applicant also contends that she acquired the said parcel of land after the Court in Succession Cause No. 100 of 2012 issued an order that their deceased husband's land be subdivided.
21. The Plaintiff/Applicant further contends that the said parcel of land was to be subdivided between herself and the Defendant/Respondent as they were both wives of the deceased.
22. It is the Plaintiff/Applicant's contention that since she acquired the said parcel of land she has not been able to utilize it as the Defendant/Respondent has resorted to using violence to keep her away from the land.
23. The Plaintiff/Applicant has attached a copy of the title deed for land parcel No. Kericho/Kapsuser/7993 to her affidavit in support of the application.
24. The said title deed shows that Leah Chebii Langat [the Plaintiff], is the registered owner of land parcel No. Kericho/Kapsuser/7993. The title deed was issued on 5th December, 2023.
25. My view is that the Plaintiff/Applicant has demonstrated a *prima facie case*.
26. The second condition for grant of orders of temporary injunction is that the Plaintiff/Applicant must demonstrate that she will suffer irreparable injury that would not be adequately compensated by way of damages.



27. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself 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.”

28. The judicial decision in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR provides an explanation of what is meant by irreparable injury. It is 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.”

29. The Plaintiff/Applicant has not addressed the issue of whether or not she will suffer irreparable harm which cannot be adequately compensated by way of damages.

30. If after making considerations on the existence of a *prima facie case* and irreparable injury the Court is still in doubt, then an application for temporary injunction is to be determined on the basis of balance of convenience. This means that the Plaintiff/Applicant must demonstrate that the balance of convenience tilts in her favour.

31. The Plaintiff/Applicant has demonstrated a *prima facie case* but has not demonstrated the irreparable injury she is likely to suffer if the orders sought are not granted.

32. I shall therefore determine this application on the basis of balance of convenience.

33. In *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [*supra*] the Court held as follows;

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it” [Emphasis mine]



34. Even though the Plaintiff/Applicant has demonstrated that she has title to the suit parcel, she admits at paragraph 5 of the supporting affidavit that the Defendant/Respondent has planted tea bushes on the said parcel of land. This means that the Defendant/Respondent is in occupation.
35. Therefore, the inconvenience that will be caused to the Plaintiff/Applicant cannot be said to be greater than that which would be caused to the Defendant/respondent if an injunction is granted and the suit is ultimately dismissed.
36. My view is that the balance of convenience does not tilt in favour of the Plaintiff/Applicant.

Disposition.

37. Taking the foregoing into consideration, I find that the Plaintiff/Applicant has failed to satisfy the conditions for grant of a temporary injunction. Consequently, the application is hereby dismissed with costs.
38. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 31ST DAY OF JULY, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Malel for the Plaintiff/Applicant.

No appearance for the Defendant/Respondents.

Mr. Makori - Court Assistant.

