

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT LIKGORIS
ELCLC NO. E013 OF 2025

ISAAC KISHOYIAN KANYAI.....
.....PLAINTIFF

VERSUS

DAVID LEMAN..... 1ST
DEFENDANT

THE LAND REGISTRAR TRANSMARA.....2ND
DEFENDANT

ATTORNEY GENERAL.....3RD
DEFENDANT

RULING

1. The Application dated 2nd July 2025, brought under a certificate of urgency subject of this Ruling seeks substantive injunctive prayers against the 1st Defendant/Respondent, by himself his agents and/or servants from alienating/disposing, transferring, dealing or otherwise interfering with suit property L.R No. Transmara/Isampin/511 pending determination of suit, as well as a conservatory order to preserve the suit property.
2. The Application seeks the assistance of the OCS Enosaen police station to ensure compliance of the order, while prayer 8 sought the Land Registrar to issue copies of green cards and/or any document authorizing cancellation of title in Transmara/Isampin/511. (herein after referred to as suit property)
3. Due to the orders sought the application is essentially between the Applicant and the 1st Respondent, the 2nd and 3rd Respondents advocate conceded to the grant of prayer 8 of the application which

sought supply to the Applicant of copies of green cards of the Transmara/Isampin/511.

4. The grounds in support of the application are *intaralia* that; -
 - (i) The applicant is the beneficial owner of the suit property having purchased the same from the 1st Respondent vide an Agreement for sale dated 06.01.2022 and took occupation from the said date.
 - (ii) That no transfer was done in respect of the said sale as the 1st Respondent indicated that he had lost the title deed of the suit property.
 - (iii) That the 2nd Respondent proceeded to cancel the applicant's registration over the suit property and reverted ownership to the 1st Respondent, yet he had no powers to cancel and /or rectify the register of the suit property without an order of the court.
 - (iv) That the Applicant extensively developed the suit property and interest of justice dictate that the suit property be preserved by allowing the application herein.
5. The application is supported by the Affidavit of the Applicant who depones and reiterates the ground in support of the application as well as exhibits a copy of the agreement for sale, copy of the transfer and consent, copy of the testimony declaration, copy of official search and title.
6. In opposition to the application, a Replying affidavit by David Leman Kantai who narrates in his deposition;
 - (i) The history of the suit property from time of adjudication to the litigation history between himself and one Susan Enchumpai Siparo.

- (ii) That he never entered into the Agreement for the sale between himself and the plaintiff, and he execute the Agreement under the influence of Alcohol and that the same was under investigation at the DCI office.
 - (iii) That he never appeared before the land control Board for purpose of procuring a consent to transfer and that he never appeared before the Advocate for who prepared the agreement for the and purported transfer documents hence the transfer to the plaintiff was procured illegally.
7. The Applicant sought and was granted leave to file a supplementary affidavit.
 8. In the said supplementary affidavit, the Applicant reiterates the purchase of the said suit property, obtaining transfer in his name and possession thereof.
 9. That the 1st Respondent had agreed to sell the suit property to him so as to compromise the *prethora* of cases, noting that the suit property ought to have been adjudicated in favour of Naibartuni Ene Ntina but fraudulently was adjudicated in favour of the 1st Respondent.
 10. The court directed the application to proceed by way of written submissions, and the parties filed. Their respective submissions are summarized as herefollows: -

Applicant's Submissions

11. The Applicant submits that the Land Registrar acted ultra vires hence his actions of cancellation of the title belonging to the Applicant was irregular null and void. The Applicant submits that the Land Registrar's power under section 79 of Land Registration Act relate only to rectification of errors mistakes or omissions that do not materially affect the interests of any proprietor; and in support of this limb of submissions he places reliance on the decision in the case of Republic

Vs. Chief Land Registrar and Another Exparte Yosabia Kerubo Manyara (2018) eKLR.

12. The Applicant submits that he has met the threshold for grant of a temporary injunction as was stated in the case of Giella Vs. Casman Brown and Co. Ltd 1973 (E.A) 358. The Applicant submits that there is an infringement of his right and he has thus established a prima facie case as was defined in Mrao Limited Vs. First American Bank Ltd and 2 Others (2003) KLR 125.
13. The infringement of the right is that he is in actual possession of the suit land, having purchased the same lawfully, and developed the same.
14. The Applicant further submits that there was collusion between the 1st and 2nd Respondents. Leading to the unlawful action of cancelling his registration without a court order thus infringement of his right of fair administrative action and in support of this limb of submissions, the Applicant relies on the decision in the case of Republic Vs. Land Registrar Mombasa AND another - Exparte Slahudeen (2016) eKLR, as well as Super Nova Properties Limited Vs. District Land Registrar Mombasa and 2 Others, KACC and 2 Others.
15. On the strength of the above the Applicant submits that he is entitled to the orders sought.

Respondents Submissions

16. The Respondents submit that the Agreement for sale and subsequent transfer were disputed and that the title allegedly hitherto owned by the Applicant was acquired through a corrupt criminal and fraudulent scheme; hence the Applicant is not entitled to the equitable relief of an injunction. In support of this submission, the Respondent rely on the decision in the case of Mursal Guleid and 2 Others Vs. Daniel Kioko Musau (2016) eKLR.

17. The Respondent submits due to the illegality of the Agreement for sale the same is not enforceable and the Applicant has thus not established a prima facie case with probability of success, and have cited the decisions in the cases of Board of Trustees NSSF Vs. Michael Mwalo, and Makula International Ltd Vs. His Eminence Cardinal Nsubuga and Another.
18. On the strength of the above the Respondent urges the court to dismiss the application.

Issues for Determination

19. Having analyzed the application, the affidavits in support and in opposition as well as the rival submission? the court frames issues for determination, as follows; whether or not the application is merited, and shall determine
- (i) Whether or not the applicant has met the threshold for grant of a temporary injunction.
 - (ii) What orders ought to issue.
 - (iii) Who bears the costs of the application?

Analysis and Determination

20. The principles of grant of a temporary injunction were laid down in the case of Giella Vs. Cassman Brown and Co. Limited, as rightly submitted by the Applicant. The Principles are; -
- (i) The Applicant must show a prima facie case with a probability of success.
 - (ii) The applicant must demonstrate that he will suffer irreparable harm which cannot be compensated by damages.
 - (iii) The court is in doubt, it will decide the matter on a balance of convenience.
21. Has the Applicant established a prima facie with probability of success? In his application the Applicant contends that pursuant to the Agreement of sale, the suit property was transferred to him and

thereafter his registration was illegally cancelled. He exhibited on an Agreement for sale, transfer documents as well as LCB application for consent to transfer.

22. Prayer 8 of his application was for the supply of green card was allowed on 30.07.2025 on which date he was granted leave to file a supplementary affidavit. In his supplementary affidavit, the Applicant depones of the illegal cancellation of his registration by the Land Registrar. A copy of the record (green card) would have proven that indeed the Applicant had been registered as a proprietor of suit property but his registration was illegally cancelled, by the Land Registrar, that green card was not annexed before court.
23. The Applicant had a chance to demonstrate that by filing a copy of the green card that he had sought to be availed to him in prayer 8 of the application; but he did not.
24. A prima facie case was defined in Mrao Limited vs First American Bank of Kenya Ltd and Others (2003) KLR the Court of Appeal stated that a prima facie is one ***“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 part so as to call for an explanation or rebuttal from the latter.”***
25. From the said definition, and having not exhibited the copy of the green card, there is no evidence placed before court to show that the Applicant’s right has been infringed so as to call for a rebuttal from the Respondents. At this interlocutory stage, the Applicant has not demonstrated which right has been infringed by the Respondent, hence no prima facie has been established.
26. In Kenya Commercial Finance Company Ltd vs Afraha Education Society 2001 EA. 86 the court held that; ***“once a prima facie case is not established the other two principles need no consideration”***.

27. Having not established the prim facie case, the court is not convinced that it should issue an injunction order against the 1st Respondent who is the Registered proprietor.
28. The court thus declines the prayer for a temporary injunction as sought in the application.
29. In order to preserve the suit property from being wasted and/or transferred, the court tissues an order for the maintenance of the status quo currently on the ground and on the register of Transmara/Isampin/511 pending hearing and determination of this suit.
30. For avoidance of doubt, the status quo order issued means that the current occupant of the suit property to remain in possession till determination of the suit, and the status quo on the register, to mean that the property, to remain in the name of the registered owner till determination of the suit.
31. The status quo order issued above are issued pursuant to practice direction number 28K_gazette issued vide gazette Notice number 5178/2014 which empowers the court to issue the status quo orders.
32. Costs of the application shall be in the cause.
33. Orders accordingly.

Dated at Kilgoris this 30th day of November, 2025.

Hon. M.N Mwanyale
Judge

In the presence of

CA - Emmanuel/Sylvia/Sandra
Mr. Otieno for 1st Respondent

Mr. Nyambati for Appellant

Mr. Osebe for 2nd and 3rd Respondent