



REPUBLIC OF KENYA



Kudate & 2 others v Njui & 5 others (Environment and Land Case E117 of 2024) [2025] KEELC 7221 (KLR) (16 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7221 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E117 OF 2024
LC KOMINGOI, J
OCTOBER 16, 2025**

BETWEEN

**NTAI OLE KUDATE 1ST PLAINTIFF
ISAAC KORES OLE MEMURUTI 2ND PLAINTIFF
KARIUKI OLE KIPISH 3RD PLAINTIFF**

AND

**DANIEL NGOTIEK OLE NJUI 1ST DEFENDANT
NGOTIEK MESHOLOLO 2ND DEFENDANT
DAVID SELELA RAKUA 3RD DEFENDANT
JULIUS MATILONG KAREI 4TH DEFENDANT
GEOFLEX CONSULTANTS LIMITED 5TH DEFENDANT
OLDONYO ONYOKIE GROUP RANCH 6TH DEFENDANT**

RULING

1. This ruling is in respect of the Notice of Motion dated 30th October 2024, seeking to restrain the Defendants/Respondents from sub-dividing, surveying, developing survey plans, allocating, alienating, transferring, processing and or issuing any title deeds or dealing in any manner with the suit property known as Kajiado/Oldonyio-Nyokie/3 and from calling for and or holding a general meeting of the members of Oldonyio – Nyokie Group Ranch to discuss, the sub-division, survey, and titling process of the suit property known as Kajiado/Oldonyio – Nyokie/3 pending the hearing and determination of the suit.
2. The Application is opposed.



There is a Replying Affidavit filed on behalf of the 1st –4th, 6th Defendants/Respondents.

3. On the 20th February 2025, the court with the consent of the parties, directed that the Notice of Motion be canvassed by way of written submissions.
4. The Plaintiffs'/Applicants' submissions are dated 23rd April 2025. It is their submission that the inclusion of individuals who are not members of Oldonyo Onyokie Group Ranch as beneficiaries of the suit property has created tension, mass anxiety and political strife. That there is imminent fear that violence will ensue if the subdivision and tilting proceeds in the current circumstances. That a prima facie case has been established.
5. It is further submitted that, the 1st to 4th Defendants/Respondents have refused to address the members concerns that the sub-division is marred by irregularities. That the members have been denied the right to participate in the management of their ancestral land thus prejudicing their interests. This amounts to irreparable harm that cannot be compensated by an award of damages. They have put forward the cases of Nguruman Limited Vs. Jan Bonde Melber & 2 Others (2014) eKLR ; Pius Kipchirchir Kogo Vs. Franck Kimeli Tenai (2018) eKLR .
6. It is also submitted that the balance of convenience tilts in favour of the injunction to preserve the status quo. They urge the court to allow the Application.
7. The Defendants/Respondents' submissions are dated 19th May 2025. It is submitted that the Plaintiffs/Applicants have failed to demonstrate a prima facie case with a probability of success.
Further that the Defendants/Respondents have produced clear cogent and verifiable evidence demonstrating the legality and transparency of all actions taken concerning the sub-division and tilting of Kajiado/Ol donyo Onyokie/3, which was completed in 2022.
8. It is also submitted that the Plaintiffs/Applicants sat on their rights for years despite having full knowledge of the ongoing sub-division process since the year 2012. That they have failed to demonstrate that they will suffer irreparable harm if the orders are not granted.
9. It is submitted that the balance of convenience lies with the legitimate members and beneficiaries of Oldonyo Onyokie Group Ranch who have waited for over a decade to receive their titles.
10. It is submitted that the application has been overtaken by events and is an abuse of the court process. They pray that the Application be dismissed with costs to the Defendants/Respondents.
11. I have considered the Notice of Motion, the Affidavit in support, the response thereto and rival submissions and the authorities cited. The issues for determination are;
 - i. Whether the Plaintiffs/Applicants' Application meets the threshold for grant of temporary injunction.
 - ii. Who should bear costs of this Application?
12. The conditions for grant of temporary injunction were set out in the precedent setting case of Giella Vs. Cassman Brown (1973) EA 358.

In the case of Mrao Limited Vs. First American Bank of Kenya Limited & 2 Others (2003) eKLR the Court of Appeal defined what amounts on prima facie case as;

“I would say that in civil cases it is a case in 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 party as to call for an explanation or rebuttal from the latter....



But as I earlier endeavored to show, and I cited ample authority for it, a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case."

13. It is the Defendants'/Respondents' case that the sub-division and titling commenced in the year 2012 and has been completed.
14. I find that the Plaintiffs/Applicants have failed to establish a prima facie case with a probability of success at the trial.
15. I am also not satisfied that they will suffer irreparable harm if these orders are not granted.
16. I agree with the Defendant/Respondent's that the balance of convenience tilts in favour of letting the process proceed to conclusion.
17. The upshot of the matter is that I find no merit in this application and the same is dismissed. The costs shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF OCTOBER 2025.

L. KOMINGOI

JUDGE.

In the Presence of:

Ms. Kokelo for Mr. Orina for the Plaintiffs/Applicants.

Ms. Gichuki for the 1st – 4th, 6th Defendants/Respondents.

N/A for the 5th Defendant.

Court Assistant – Peter.

