



REPUBLIC OF KENYA



**Mutindimi v Nganga (Environment and Land Case E010 of 2025)
[2025] KEELC 7325 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7325 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E010 OF 2025
NA MATHEKA, J
OCTOBER 29, 2025**

BETWEEN

REUBEN MAKAU MUTINDIMI PLAINTIFF

AND

JOHN CHUAGA NGANGA DEFENDANT

RULING

1. The application is dated 30th January 2025 and is brought under Order 40 Rule 1(a) and (b) and Order 50 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A and 3B of the Civil Procedure Act and Sections 45, 47, 72 (a) and Rules 7(1) 49, 64 and 73 of the Probate and Administration Rules of the Law of Succession Act seeking the following orders;
 1. That this Honourable Court be and is hereby pleased to certify this application as urgent and the same be heard ex parte in the first instance.
 2. That pending the hearing and determination of this application this Honourable Court be and is hereby pleased to issue conservatory orders in respect of land originally described as land parcel No. Mavoko Town Block 12/295 and subsequent sub-divisions now described as land parcels No Mavoko Town Block 12/5541-5584 or any other sub-divisions arising therefrom.
 3. That pending hearing and determination of this application and the suit, leave be granted to the Plaintiff/Applicant to serve the Defendant with summons to enter appearance, the Plaintiff and any orders issued herein by way of substituted service through newspaper advertisement by Nation Newspaper.
 4. That upon hearing and determination of this application this Honourable Court be and is hereby pleased to issue conservatory orders in respect of land originally described as land parcel No. Mavoko Town Block 12/295 and subsequent sub-divisions now described as land parcels



No. Mavoko Town Block 12/5541-5584 or any other sub-divisions arising therefrom until the suit herein is heard and determined.

5. That upon the hearing and determination of this application, this Honourable Court be and is hereby pleased to issue orders for temporary injunction restraining the Defendant his relatives, agents, servants or any person acting under his authority restraining them from trespassing, selling surveying, sub-dividing, farming, leasing, charging, surveying, building, transferring or interfering in any way with land originally described as land parcel No. Mavoko Town Block 12/295 and subsequent sub-divisions therefrom now described as land parcels No. Mavoko Town Block 12/5541-5584 or any other sub-divisions arising therefrom until the suit herein is heard and determined.
 6. That the OCS Mavoko Police Station ordered to safeguard and enforce the orders of this Honourable Court.
 7. That the costs of this application be paid by the Respondents.
2. It is supported by the annexed Affidavit of Reuben Makau Mutindimi the Plaintiff/Applicant herein and the following grounds that there is urgent need to issue appropriate restraining orders against the Defendant/Respondent who fraudulently and illegally transferred land originally described as Mavoko Town Block 12/295 belonging to the Plaintiff into his name and subsequently sub-divided the said land into parcels No. Mavoko Town Block 12/5541-5584 which totals to about 43 plots without the knowledge and consent of the Plaintiff/Applicant. That the Plaintiff/Applicant who had been in occupation of the suit land from 1994 to the year 2021 by farming hay and selling the same to farmers stopped farming the said land in April, 2014 when he fell ill and relocated to his rural home in Kagundo but when he returned to the said land in September, 2024, he was surprised to find some strangers having built homes on his land. That at the advice of his Advocate, he extracted a green card for the said piece of land on 8th October, 2024 and was surprised to discover that the Defendant was registered as a proprietor way back on 25th June, 2003 without his knowledge or consent since he had all along been waiting for release of his title deed by the officials of Drumvale Farmers' Co-operative Society who were facilitating issuance of the said title deeds to their members wherein the Applicant was member No. 329.
 3. That from the foregoing, the transfer of land parcel No. Mavoko Town Block 12/295 to the Defendant and subsequent survey and sub-division of the same into parcels No. Mavoko Town Block 12/5541-5584 which totals to about 43 plots was fraudulent, illegal as a consequence of which the same should be protected by issuance of appropriate orders by this Honourable Court. That unless the orders sought are granted, the Defendant/Respondent will continue to sub-divide the suit land and transfer the same to third parties to the detriment of the Plaintiff/Applicant. That since the whereabouts of the Defendant/Respondent is not known, it is fair and in the interest of justice that service of Summons and Plaint be done through substituted service. That it is only fair and just that the orders sought should be granted.
 4. This court has considered the application and the supporting affidavit therein. The Respondent was served by way of substituted service but failed to file any response. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of Giella vs Cassman Brown (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan



courts and more particularly in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

5. Consequently, the Plaintiff ought to, first, establish a prima facie case. In *Mrao Ltd vs First American Bank of Kenya Ltd* (2003) eKLR the Court of Appeal gave a determination on a prima facie case. The court stated 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 legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

6. In support of his application, the Plaintiff/Applicant stated that he had all along been waiting for release of his title deed by the officials of Drumvale Farmers’ Co-operative Society who were facilitating issuance of the said title deeds to their members wherein the Applicant was member No. 329. To his surprise, the Defendant/Respondent has fraudulently and illegally transferred the said land originally described as Mavoko Town Block 12/295 belonging to the Plaintiff into his name in 2003 and subsequently sub-divided the said land into parcels No. Mavoko Town Block 12/5541-5584 in 20012 which totals to about 43 plots without the knowledge and consent of the Plaintiff/Applicant.

7. Secondly, The Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (2018) eKLR provides an explanation for what is meant by irreparable injury and it states;

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.

8. The Applicant stated that the transfer of land parcel No. Mavoko Town Block 12/295 to the Defendant and subsequent survey and sub-division of the same into parcels No. Mavoko Town Block 12/5541-5584 which totals to about 43 plots was fraudulent, illegal as a consequence of which the same should be protected by issuance of appropriate orders by this Honourable Court. That the Defendant/ Respondent will continue to sub-divide the suit land and transfer the same to third parties to the detriment of the Plaintiff/Applicant.

9. Thirdly, the Plaintiff has to demonstrate that the balance of convenience tilts in their favour. In the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (2018) ECLR which defined the concept of balance of convenience as:

“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”.

10. In the case of Paul Gitonga Wanjau vs Gathuthis Tea Factor Company Ltd & 2 others (2016) eKLR, the court dealing with the issue of balance of convenience expressed itself thus;

Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

11. The Plaintiff/Applicant contends that the balance of convenience tilts in his favour because if the orders sought herein are not granted there is danger of the Respondent continuing to subdivide the suit land to the detriment of the Applicant which will in turn lead to the violation of the Applicant’s proprietary rights. I find that without the intervention of this Court, the Applicant herein may suffer irreparable loss and damage.

12. The decision of Amir Suleiman vs Amboseli Resort Limited (2004) eKLR where the learned judge offered further elaboration on what is meant by “balance of convenience” and stated;

The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

13. It is not in dispute that the suit land was registered in the Applicant’s name in 1997. The Applicant alleges that the Respondent illegally transferred the same to his name and continues to subdivide. Bearing this in mind, I am convinced that there is a lower risk in granting orders of temporary injunction than not granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the current situation on the ground. I have also not had the opportunity to interrogate the annexures to therein.

14. In Robert Mugo Wa Karanja vs Ecobank (Kenya) Limited & Another (2019) eKLR where the court in deciding on an injunction application stated;

circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose



the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”

15. In view of the foregoing, I find that the application is merited and order that the status quo be maintained pending the hearing and determination of this suit. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 29TH DAY OF OCTOBER 2025.

N.A. MATHEKA

JUDGE

