

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC CASE NO E054 OF 2025

ABRAHAM KIBET CHEPKWONY..... PLAINTIFF/APPLICANT

VERSUS

GEOFFREY

KIPKORIR

SANG.....DEFENDANT/RESPONDENT

RULING

1. This ruling is in respect of the Plaintiff/Applicant’s Notice of Motion application dated 28th May, 2025 which seeks the following orders:
 - a) *Spent*
 - b) *Spent*
 - c) ***THAT pending the hearing and determination of the suit herein, an order of injunction be issued to stop and restrain the defendant, whether acting by himself or through his agents, servants, hoodlums, employees or through anybody acting on his authority, from entering, encroaching, trespassing, developing, selling, charging, or leasing land parcel No MOLO SOUTH/LANGWENDA BLOCK 3/135 (SET KOTES).***
 - d) ***THAT pending the hearing and determination of the suit herein, the Defendant be and is hereby ordered to pull down any structures put up by him and/or his agents within and around the suit property.***

e) THAT the County Police Commander Nakuru County (CPC), Nakuru County be ordered to ensure compliance of the orders herein.

f) THAT the defendant be condemned to pay costs.

2. The application is supported by the annexed affidavit of Abraham Kibet Chepkwony, the Plaintiff/Applicant, sworn on 28th May, 2025, where he deponed that he is the absolute proprietor of land parcel No. MOLO SOUTH/LANGWENDA BLOCK 3/135 (SET KOTES), and was issued with a title deed in his name on 26th June, 2013 after purchasing the suit land from Andrew Ombati Kyambatu.
3. In his deposition, the Applicant stated that on 9th March, 2025, he was approached by the Defendant who was in the company of about five other people. He was informed that they had earlier visited his land and met people claiming to be his agents who negotiated with them for the purchase of his parcel of land. He further deponed that he was informed that they had proceeded to make payments to the said people and one of them was posing as the applicant.
4. The Applicant further deponed that he was shown a sale agreement that had a signature that was not his, despite bearing his name and identity card number. According to the Applicant, he had used his title deed to secure a loan from the National Bank of Kenya, hence they could not have been given the original title.

5. He further stated that in April 2025, he was arrested and charged together with other people unknown to him with the offense of conspiracy to defraud contrary to section 317 of the Penal Code and arraigned in MOLO CMCR NO E0581/2025 which case is still ongoing. Further, that on 26th May, 2025, the Defendant in the company of more than twenty goons set up a structure and a fence around the property and destroyed crops.
6. The Applicant urged the court to grant the orders sought, as he ought not to be dispossessed of his land in favour of a stranger whose only claim is in an impugned agreement executed by a fraudster.
7. Geoffrey Kipkorir Sang, the Defendant/Respondent filed a Replying Affidavit sworn on 16th June, 2025, and deponed that he is a Police Officer and has worked with the National Police Service for a period of seventeen years. He further stated that he visited the site and met one Sammy Kiplagat Sang who introduced himself as the caretaker of the property in the company of three people namely, Rodger Korir, Titus Cheruiyot and Nicholas Cheruiyot, who were agents of Abraham Kibet Chepkwony, the owner of the property.
8. The Respondent further deponed that he requested a copy of the title deed, identification number and a search in respect of the suit property and the title deed and a search was availed by Mr. Cheruiyot. He also stated that they proceeded with the transaction and a sale agreement was prepared by OOGA and Company Advocates and at the law firm, one of

the persons introduced himself as Abraham Kibet, the owner of the property. The Respondent deponed that they agreed at a consideration of Ksh 6,400,000/= of which he paid Ksh.800,000/= in cash and a sum of Ksh 3,200,000/= through KCB account number 1338240021 which account he was informed belonged to one Bismark Kiprono Biwott, the applicant's son.

9. It was the Respondent's deposition that on 23rd April, 2025, they met the local Chief and elders of the area to discuss the issue of the property and the Applicant herein was present who confirmed that he had issued the documents in respect to the property to one Mr. Cheruiyot whom he acknowledged that he knew, further that the Applicant also confirmed that he gave the documents as he wanted to sell the property and urged the court to dismiss the application with costs.
10. Abraham Kibet Chepkwony, the Plaintiff/Applicant filed a Supplementary Affidavit sworn on 7th July, 2025, and deponed that the Defendant has no legal basis for trespassing into his property as no party can benefit from an illegality.

PLAINTIFF/APPLICANT'S SUBMISSIONS

11. Mr. Kipkoech, counsel for the Applicant, filed submissions dated 7th July, 2025, and identified the following issues for determination:
 - a) Whether the application is merited?***
 - b) Who bears the costs of the application?***

12. On the first issue, counsel submitted that the Defendant after discovering that the land was sold to him fraudulently and without the Plaintiff's knowledge, lodged a complaint which is the subject of an ongoing criminal case in Molo CMCR E581 of 2025. Counsel submitted that by pursuing the criminal case, he implicitly acknowledges that the valid sale agreement exists and he cannot later claim that he purchased the property in good faith, as this would amount to approbation and reprobation.
13. Counsel submitted that the Plaintiff neither entered into an agreement nor a consent with the Defendant for the sale of his property. Counsel relied on Article 162 (2) (b) of the Constitution of Kenya, Section 13 (2) of the Environment and Land Court Act and Sections 24 (a), 25 and 26 of the Land Registration Act.
14. According to counsel, the Applicant has established a *prima facie* case with a probability of success, and further that the balance of convenience tilts in favor of the Plaintiff as he is likely to suffer more damage than the Defendant if the injunction is not granted.
15. Counsel relied on the cases of **Dr. Joseph Arap Ngok vs Justice Moiwo Ole Keiwa & 5 others, Civil Appeal Number Nai 60 of 1997, Evans vs Bartlam [1937] 2 ALL ER 649, Lwanga vs Mubiru & others (Civil Appeal 18 of 2022) [2024] UGSC7, Dina Management Limited vs County Government of Mombasa & 5 others [2023] KESC 30 (KLR), Joash Ochieng Ougo & another vs Virginia Wambui Otieno [1987] eKLR, Kenya Airline Pilots Association**

(KALPA) vs Cooperative Bank of Kenya Limited & another [2020] eKLR, Mrao Limited vs First American Bank of Kenya Limited & 2 others [2003] KLR 125 and Alice Chemutai Too vs Nickson Kipkurui Korir & 2 others [2015] eKLR, and urged the court to grant the application as prayed with costs.

RESPONDENT'S SUBMISSIONS

16. Mr. Makori, counsel for the Respondent filed submissions dated 10th September, 2025, and identified the following issues for determination:
 - a) *Whether the Applicant has a prima facie case with high chances of success?*
 - b) *Whether the Applicant would suffer irreparable loss?*
 - c) *Whether the Court can decide this case on a balance of convenience?*

17. On the first issue, counsel submitted that the Applicant intends to repossess the property, which he sold to the Defendant denying him his proprietary rights. Counsel submitted that the applicant has failed to demonstrate a *prima facie* case to warrant issuance of injunctive orders, and relied on the cases of **Giella vs Cassman Brown (1973) EALR 358, Vivo Energy Kenya Limited vs Maloba Petrol Station Limited & 3 others [2015] eKLR, National Bank of Kenya vs Duncan Owour Shakali & Another CA No 9 of 1997 and Habib Bank Ag Zurich vs Eugene Marion Yakub CA No 43 of 1982 (unreported).**

18. On the second issue, counsel submitted that the applicant has not demonstrated the injury he will suffer if the injunction is not issued.

Further that the Defendant is the one in possession of the suit property. According to counsel, the Applicant has not demonstrated that he will not be able to be compensated by way of damages and relied on the case of **Nguruman Limited vs Jan Bonde Nielsen (2014) eKLR**.

19. On the third issue, counsel submitted that the applicant is not in occupation of the suit property and therefore the balance of convenience cannot tilt in his favor and relied on the cases of **Amir Suleiman vs Amboseli Resort Limited [2004] 2KLR 589** and **Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR**. Counsel urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

20. The issue for determination is whether the Applicant has met the threshold for the grant of a temporary injunction. For an order of injunction to issue, an Applicant must satisfy three conditions set out in the case of **Giella Vs. Cassman Brown (1973) EA 358**, namely; establish a *prima facie* case with a probability of success, irreparable harm that cannot be adequately compensated by an award of damages and if the Court is in doubt, it should decide on a balance of convenience.
21. Order 40 Rule 1 of the Civil Procedure Rules 2010 provides as follows:
Where in any suit it is proved by affidavit or otherwise—

- a. *that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*
- b. *that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.*

22. In the case of **Rockland Kenya Limited v Elliot White Miller [1994] eKLR**, the court held as follows:

“The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in the action if the matters in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated

under the Plaintiff's undertaking in damages if the subject-matter of the trial was decided in his favour. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations.”

23. In the case of **Robert Mugo Wa Karanja Vs Ecobank (Kenya) Limited & Another [2019] eKLR** the court stated that:

“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...”

24. The grant or refusal to grant an order of temporary injunction is discretionary, but the court must exercise the discretion judiciously taking into account the rights of the parties to the suit and the interest of justice. Both parties claim to be in possession but the Respondent does not deny that the suit land belonged to the Applicant, which he purports to have bought from the agents of the Applicant.
25. From the affidavit evidence tendered by both the Applicant and the Respondent, it is imperative to protect the substratum of the case by granting an order of temporary injunction. The parties can fast track the hearing of the suit to enable the court to determine the issue of ownership and whether there was any fraud involved in the transaction in respect of the suit property.
26. I have considered the application, the submissions by counsel and find that the Applicant has established a *prima facie* case with a probability of success and I therefore make the following specific orders:
- a) A temporary injunction is hereby issued restraining the defendant, whether acting by himself or through his agents, servants, hoodlums, employees or through anybody acting on his authority, from entering, encroaching, trespassing, developing, selling, charging, or leasing land parcel No MOLO SOUTH/LANGWENDA BLOCK 3/135 (SET KOTES) pending the hearing and determination of the suit herein.***
 - b) Costs shall be in the cause.***

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF
NOVEMBER 2025.**

**M. A. ODENY
JUDGE**