



Kanyongu (Suing as the Administratrix of the Estate of Wilson Yakiyak Kanyongu - Deceased) v County Government of West Pokot & another (Environment and Land Case E043 of 2025) [2025] KEELC 7885 (KLR) (12 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7885 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E043 OF 2025
CK NZILI, J
NOVEMBER 12, 2025**

BETWEEN

FRIDAH CHEYECH KANYONGU (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF WILSON YAKIYAK KANYONGU - DECEASED) .. PLAINTIFF

AND

**THE COUNTY GOVERNMENT OF WEST POKOT 1ST DEFENDANT
THE CHIEF OFFICER INDUSTRIALIZATION, INVESTMENT & CO-OPERATIVES, COUNTY GOVERNMENT OF WEST POKOT 2ND DEFENDANT**

RULING

1. Through an application dated 12/9/2025, the applicant prays for a temporary injunction barring and restraining the respondents, their agents, servants, or employees from utilizing, constructing, entering, wasting, remaining on, trespassing upon, or undertaking any activities on L.R. Nos. West Pokot Chepareria 3185 and 3186, pending the hearing and determination of this suit.
2. The application is premised on the grounds on the face of it and in a supporting affidavit of Fridah Cheyech Kanyongu, sworn on the same date.
3. As the legal administratrix of the estate of Wilson Yakiyak Kanyongu, pursuant to a limited grant attached as WYK-(1).
4. The applicant deposes that the 1st respondent offered to purchase the deceased's land as per the offer letter attached as WYK-(2), following which negotiations were conducted, and the purchase price payable was agreed upon, pending the formal subdivision and transfer process.



5. The applicant deposes that after the survey, the 1st respondent was shown the 2 portions, took vacant possession, and developed the same. Annexed are the offer letter and the valuation marked WYK-(2) and (3).
6. Again, the applicant deposes that the title deeds are out as per annexure marked WYK-4(a) and (b), though in the name of the deceased. The applicant deposes that the defendants have refused, failed, or neglected to pay the agreed consideration to the deceased or his estate.
7. The respondents did not oppose the application.
8. The primary suit is the plaint dated 12 9 2025. The plaintiff seeks:
 - a. Declaration that the continued occupation of the defendants on Title Nos. West Pokot Chepareria 3185 and 3186 is unlawful.
 - b. Permanent injunction restraining the defendants from remaining on, trespassing upon, or in any way interfering with the suit properties.
 - c. Eviction.
 - d. Mesne profits or damages for trespass.
9. The plaintiff avers that L.R. No. West Pokot Chepareria 1653 belonged to the late Wilson Yakiyak Kanyongu, who had offered to sell the land to the defendants, which, in efforts to finalize the transaction, was subdivided into Title Nos. West Pokot Chepareria 3185 measuring 0.60 Ha and No. West Pokot Chepareria 3186, which the defendants currently possess, though they have declined to pay the agreed consideration to the deceased or his estate.
10. The plaintiff terms the occupation illegal, which has caused the estate of the deceased to suffer loss and damage.
11. The power to grant a temporary injunction based on an alleged breach of a contract, alleged wastage, damage, or alienation of property subject to a dispute in court, or injury to it is governed by Section 63(e) of the *akn ke act 1924 3 Civil Procedure Act* and Order 40 Rule (1) and (2) of the Civil Procedure Rules.
12. The rights of parties to a land sale agreement are governed by Sections 38 - 42 of the *akn ke act 2012 6 Land Act*. What the plaintiff is saying is that the defendants, despite taking vacant possession of the two parcels of land, the subject matter in the offer letter dated 16 8 2012, and the valuation letter dated 26 1 2024, have reneged on paying the agreed consideration.
13. Other than the offer letter and the taking of vacant possession, there is no evidence that the parties executed a formal sale agreement as was envisaged in the offer letter, showing the consideration due, terms and conditions of the same, and the timelines within which the transaction ought to have been completed, particularly after the coming into force of the county governments in 2010.
14. A land sale agreement must abide by Section 38 of the *akn ke act 2012 6 Land Act* as read together with Section 3 of the Law of Contract. The key elements in a land sale agreement are the identity of the parties, purchase price, property description, obligation terms, and conditions.
15. Section 6 of the County Government Act grants the County Government powers to enter into a contract, acquire, purchase, or lease any land. The acquisition of land by counties must abide by the provisions of the *akn ke act 2012 18 Public Finance Management Act*, Cap 412 A. The accounting



- officer must also abide by the National Treasury Circular No. 5 dated 28 2024 and, in particular, Section 12 (2) (k) of Cap 412 A, and the Land Regulation Legal Notice No. 280 of 2017.
16. Section 7 of the *akn ke act 2012 6 Land Act* provides for the methods of acquiring title to land. Conversion of private land to public land is covered by Section 9(2)(c) of the *akn ke act 2012 6 Land Act*. Section 39 of the *akn ke act 2012 6 Land Act* grants a vendor the right to regain possession peacefully or through a court order under Section 41 thereof. Section 40 provides that the vendor may also be entitled to damages for breach of contract.
 17. In this suit, the plaintiff only holds a limited temporary grant of letters of administration ad litem.
 18. The offer letter dated 2012 was made by the Town Clerk of the defunct Town Council of Chepareria. The offer for Kshs. 13,000,000 = was accepted by the deceased on 16 8 2012. It allowed the predecessors of the 1st defendant to take vacant possession for development purposes while awaiting the formal signing of the agreement on the first payment. The deceased was to surrender the titles to the purchaser once the last payment was made.
 19. The timelines set therein for the release of the first instalment were by August 2013. The letter indicated that the deceased had bid for the land acquisition, which bid was competitive and, upon evaluation, was accepted by the purchaser. The subject land was described as Title No. West Pokot Chepareria 1653 for the 10 demarcated plots, each costing Kshs. 1,300,000 =.
 20. It appears that the title deeds were only acquired in the name of the deceased on 22 4 2024. The demand letter seeking consideration is dated 3 2 2023. This was before the title deeds came into the name of the deceased, going by a copy of the search dated 16 4 2024. The limited grant of letters of administration ad litem dated 4 9 2025 shows that the deceased passed on on 27 5 2023, before the title deeds were issued to him. The grant is also limited to the filing of the suit.
 21. A limited grant ad litem under Schedule 5 of the Law of Succession Cap 160 does not give a personal representative authority or confirm the authority to act with respect to the whole estate in all aspects, until the administration is completed. See *Re Estate of Mary Syokwia Kyalili* [2015] KEHC 961 (KLR), *Re Estate of Jennifer Kusuro Musiwa (Deceased)* [2021] eKLR, and *Re Estate of Helena Wangechi Njoroge (Deceased)* [2015] eKLR.
 22. The plaintiff seeks equitable rights of injunction based on a letter of offer signed in 2012. The conditions therein were not met by the deceased until 2024 for him to be entitled to demand the consideration in full. The 1st defendant is on the land out of the permission of the deceased and his estate. The defendants have overriding interests in the title based on the letter of offer.
 23. It is not disputed that the developments on the suit land came out of public funds, and the use is intended for the public.
 24. Constructive trust may be introduced in a land sale agreement, as held in *Arvind Shah & Others -vs- Mombasa Bricks & Tiles Ltd* [2023] KESC 106 [KLR] to defeat a registered title. See *Njami -vs- Njami Civil Appeal No. 34 of 2018* [2025] KECA 492 [KLR] (14th March 2025) (Judgment).
 25. The question is whether the plaintiff has met the ingredients of granting a temporary injunction. A prima facie case is where there is evidence of an infringement of a right by the opposite party. I think the plaintiff has shown that the defendants have neglected to enter into a formal sale agreement or to make the payment of the first instalment by 2013.



26. Irreparable damage may not be quantified by way of damages. It must be real, apparent, and imminent. See *Mrao Ltd -vs- First American Bank of (K) Ltd* [2003] eKLR. I think for the defendants to have occupied the suit land since 2012, without paying a single penny, is unjustifiable.
27. The plaintiff has been denied use of the land for over 12 years. I think the plaintiff has demonstrated the apparent loss and damage. The 1st defendant has not found it necessary to regularize its occupation of the suit land almost 10 years after it took vacant possession.
28. On the other hand, the plaintiff has not complied with Section 152 E & F of the *akn ke act 2012 6 Land Act*; if at all, the defendants are trespassers on the land. The valuation report confirms that there are market shades, office blocks, an ablution block, a garbage holding, fresh market stalls, a concrete water tank, a youth empowerment block, a market office block, a sentry box, market stalls, and some semi-permanent structures on the two parcels of land.
29. The properties are already in use by the defendants. Issuing a temporary injunction to stop the defendants and members of the public from undertaking any activities on the suit properties would only cause more inconvenience to the members of the public compared to the inconvenience or loss that the plaintiff can suffer in the absence of an injunction. See *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* [2018] eKLR.
30. The main concern of the court is to do justice to the parties and to balance the scales of justice. In exercising this discretion, the court always opts for the lower rather than the higher risk of injustice. See *Films Rover International Ltd -vs- Cannon Film Sales Ltd*[1986] 3 ALL ER 772.
31. I think the applicant has demonstrated an actionable wrongdoing on the part of the 1st respondent. To prevent the endless and indefinite utilization of the suit premises by the County Government of West Pokot, I direct that the 1st respondent deposits Kshs. 10,000,000 =, with the estate of the applicant within 2 weeks, in the absence of which the respondents shall be restrained from further utilization of the suit premises.
32. Orders accordingly

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS OPEN COURT AT KITALE ON THIS 12TH DAY OF NOVEMBER 2025.

In the presence of:

Court Assistant – Dennis

Khisa for plaintiff applicant present

Respondent absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

