



Shirika Housing Cooperative Society v Piyank & another (Environment and Land Case E129 of 2024) [2025] KEELC 5720 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5720 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E129 OF 2024
LC KOMINGOI, J
JULY 31, 2025**

BETWEEN

SHIRIKA HOUSING COOPERATIVE SOCIETY PLAINTIFF

AND

WILSON TETO OLE PIYIANK 1ST DEFENDANT

COUNTY LAND REGISTRAR KAJIADO 2ND DEFENDANT

RULING

1. This Ruling is in respect to the Notice of Motion dated 19th November 2024 and the Preliminary Objection dated 20th March 2025.
2. The Notice of Motion is brought pursuant to Sections 1A, 1B, 3A and 63(1)(e) of the [Civil procedure Act](#); Order 40 Rule 1 and 4 of the Civil Procedure Rules and all other enabling provisions of the law.
3. It seeks orders that;
 - i. Spent;
 - ii. Spent.
 - iii. Pending the hearing and determination of this suit, there be an order of injunction restraining the Defendants and their agents, employees or representatives from interfering, in whatsoever manner, with the Plaintiff's title to ownership, possession and use of LR No. Kajiado/Kaputiei North/49484, 49483 by way of cancellation of the said title, altering or rectification of the register by doing away with the said title for purposes of reverting and or registering title number Kajiado/Kaputiei North/1608 in the name of the 1st Defendant in execution, implementation or furtherance of the decision and orders arising from Kajiado Chief Magistrate Land Dispute Tribunal Case No. 60 of 2009: Wilson Teto Ole Piyianko vs Joseph



Muigai Wanene and Kajiado Land Dispute Tribunal Case No. TC 522/09/09 Wilson Teto Ole Piyianko (Claimant) vs Joseph Muigai Wanene (Objector).

- iv. The costs of this application be provided for.
4. The grounds are on the face of the application and are set out in paragraphs 1 to 11. The same is supported by the sworn Affidavit of Stanley Miringu, Chairman of the Plaintiff.
5. He states that through a sale agreement dated 23rd February 2016, the Plaintiff purchased parcels Kajiado/Kaputiei North/49483 and 49484 from one Cyrus Nyori Ndung'u Mbugua (deceased). Prior to the purchase, due diligence was undertaken and the search dated 25th January 2016 showed that the parcels were indeed in the name of the Deceased and were subdivisions of parcel Kajiado/Kaputiei North/4043. At the time, the only encumbrance was a charge registered in favour of Grofin Africa Fund.
6. The purchase price of Kshs. 20,917,269.69 paid was used to settle the amount owed to Grofin Africa Fund, and the charge was discharged on 13th December 2016 and parcel 49483 transferred to the Plaintiff on the same day. Parcel 49484 was transferred on 13th February 2017. The Plaintiff then subdivided parcel; 49483 into 173 parcels being Kajiado/Kaputiei North/120654-120826 respectively and started selling them to third parties. 98 of these parcels have already transferred to the new owners and titles issued. The plaintiff was in the process of procuring titles for the rest.
7. While issuing some titles in 2024, some typographical errors were noted and some title deeds were returned to the 2nd Defendant for rectification. It is at this point that the 2nd Defendant informed the Plaintiff that there was a Court order issued in Kajiado Chief Magistrate Land Dispute Tribunal Case No. 60 of 2009: Wilson Teto Ole Piyianko vs Joseph Muigai Wanene. The order required that all titles arising from Kajiado/Kaputiei North/1608 which gave rise to parcel Kajiado/Kaputiei North/4043 be traced and cancelled. Following this information, the Plaintiff's Advocate perused the Court record and the following was observed the following; The suit was filed pursuant to the provisions of Section 7 (2) of the now repealed Land Disputes Tribunal Act, for purposes of entering judgement in accordance with the decision of the Kajiado Land Disputes Tribunal delivered on 8/10/2009 in Kajiado Land Tribunal Case No. TC 522/09/09 Wilson Teto Ole Piyianko (Claimant) v. Joseph Muigai Wanene (Objector). The dispute before the Tribunal related to land parcel numbers Kajiado/Kaputiei North/4043, 4044 and 4051 purportedly being subdivisions of land title number Kajiado/Kaputiei North /1735. The 1st Defendant herein being the Claimant, alleged that the Objector, Joseph Muigai Wanene, had fraudulently acquired these parcels from the registered owner Piyianko Ole Teto, who was the 1st Defendant's father. On 8th October 2009, the Tribunal delivered its decision in favour of the 1st Defendant and ordered:
- i. The Objectors to stop forthwith interfering with the Claimants right to ownership, access and use of this entitled properties whatsoever. The Claimants should be allowed to enjoy apportioned properties as they wish for the Objectors have acquired the land fraudulently and financial institution are left with an option of bringing the culprit to book.
 - ii. That the District Land Registrar in consideration to the above facts should nullify the said Title Deeds and revert ownership of the same land to the Claimants.

On 29th January 2010, the Senior Resident Magistrate in Kajiado Chief Magistrate Land Dispute Tribunal Case No. 60 of 2009 issued a decree in the above terms. On 16th October 2018 the 2nd



Defendant addressed a letter referenced KJD/LAND/ADM/CO/VOL.I/14 to the Chief Magistrate Court Kajiado seeking to verify the Decree dated 29/1/2010. In 2019, the 1st Defendant made a fraud complaint against the Objector (Joseph Muigai Wanene) to the Directorate of Criminal Investigations Kajiado Sub County (DCI) which is the same allegation that had been litigated on before the Land Dispute Tribunal in Kajiado Land Disputes Tribunal Case No. TC 522/09/09 Wilson Teto Ole Piyanko (Claimant) v. Joseph Muigai Wanene (Objector). Through a letter dated 20th August 2019, the Director of Criminal Investigations arrived at the finding that Kajiado/ Kaputiei North/4043 and 4044 were derived from sub-division of Kajiado/ Kaputiei North /1608 (and not Kajiado/ Kaputiei North /1735 as per the allegations made before the Land Dispute Tribunal. And that the 1st Defendant was the rightful owner, and that 2nd Defendant should rectify its records, cancel the subdivisions arising from Kajiado/ Kaputiei North /1608 and have the said parcel registered in the 1st Defendant's name. Thereafter, the 1st Defendant made an application in Kajiado Chief Magistrate Land Dispute Tribunal Case No.60 of 2009 seeking to amend the Decree issued on 29th January 2010 that adopted the Land Dispute Tribunal's findings on the basis of the DCI report. The application was heard ex-parte and the following orders were issued on 31st July 2024:

- (a) That the Court shall "Review" order 1 of the Ruling of 29th January 2010 to include Kajiado/Kaputiei North/1608 and all subsequent subdivisions;
- (b) Prayer no 2 of the Ruling of 29th January 2010 shall be amended to read "the Land Registrar Kajiado should nullify the title deed Kajiado/Kaputiei North/1608 together with its subsequent subdivisions and revert ownership to the Claimants.

- On 4th November 2024, the 1st Defendant made another application which was granted on 8th November 2024 granting the Court's Executive Officer and or the Deputy Registrar to sign relevant forms for purposes of implementation of the order made on 31st July 2024.

8. The Plaintiff claims that all these suits and proceedings were fatally defective, incompetent, null and void because: The 1st Defendant was never the registered owner of Kajiado/Kaputiei North/4043 and 4044. As such, he did not have the locus standi to bring a complaint before the Land Tribunal relating to proprietorship of these parcels. The complaint before the Tribunal was based on the allegation that the 1st Defendant's father was the proprietor of Land Title Kajiado/Kaputiei North/1735 which was subdivided to give Kajiado/Kaputiei North /4043 & 4044. However, this allegation was not factual because Kajiado/Kaputiei North /4043 & 4044 were subdivisions of Kajiado/Kaputiei North/1608 which the 1st Defendant did not claim before the Tribunal. On the realization that the complaint before the Tribunal was not factually accurate and the orders arising therefrom could not be implemented, the 1st Defendant cunningly reported the matter to the Director of Criminal Investigations sometime in 2019 claiming that Kajiado/Kaputiei North/4043 & 4044 were subdivisions of Kajiado/Kaputiei North /1608 and not Kajiado/Kaputiei North /1735 as initially alleged before the Land Dispute Tribunal. Upon the Director of Criminal Investigations reaching the conclusion that Kajiado/Kaputiei North /4043 & 4044 were subdivisions of Kajiado/Kaputiei North /1608, the 1st Defendant used these findings to make an application dated 24th July 2024 before the Magistrate Court in Kajiado Chief Magistrate Land Dispute Tribunal Case No.60 of 2009 Wilson Teto Ole Piyanko v. Joseph Muigai Wanene to amend/ review the Decree issued on 29th January 2010 which completely altered the findings of the Tribunal. The investigations by the Director of Criminal Investigations were skewed because at the time of the investigations Kajiado/Kaputiei North /4043 had already been subdivided and the subdivisions registered to different people, including the Plaintiff, who were not involved in the investigations. The decision by the Court to amend the Tribunal's award was in excess of its jurisdiction



as donated under the provisions of the repealed Land Disputes Tribunal Act which restricted the court's mandate to only enter judgement in accordance with the decision of the Tribunal. In any case, the Tribunal did not have jurisdiction to determine questions to ownership of land. The decision that required cancellation of titles arising from the subdivision of Land Title Number Kajiado/Kaputiei North /1608 were issued without giving the registered owners of the affected parcels an opportunity to be heard. Orders issued on 31st July 2024 and 8th November 2024 requiring reverting of title Kajiado/Kaputiei North/1608 to the 1st Defendant was void because the said parcel was never registered in his name.

9. It would therefore be in the interest of justice that the sought reliefs be issued since there was a case that ought to be conclusively determined.
10. The 1st Defendant in his Preliminary Objection dated 20th march 2025 opposed this application on grounds that:
 - i. This Court lacks jurisdiction to entertain the suit as framed, as the prayers and specifically (a) (c) (d) (e) (f) and (g) seek to interfere with a decision of Kajiado Land Tribunal Case No TC 522/09/09 Wilson Tetu Ole Piyanko(Claimant) vs Joseph Muigai Wanene and adopted as the Court's Judgement in Kajiado Chief Magistrate Land Dispute Tribunal Case No.60 OF 2009, which decision has never been Appealed against and/or set aside.
 - ii. The suit is procedurally incompetent, bad in law, and fatally defective as it seeks to challenge the decision of a Tribunal through a fresh suit via Plaint instead of a proper Judicial Review suit as required under Order 53 of the Civil Procedure Rules, 2010 and the *Fair Administrative Action Act*, 2015.
 - iii. The suit is an abuse of court process as it attempts to circumvent the legal procedure for challenging tribunal decisions and should therefore be struck out with costs.
11. In his Replying Affidavit, the 1st Defendant claimed that the suit properties Kajiado/Kaputiei North/4043 and 4044 were part of land parcel Kajiado/Kaputiei North /1735 which was a subdivision of Kajiado/Kaputiei North /1608, owned by his father, the late Piyianko Ole Teto Kompe. He claimed that the registration and ownership of parcels Kajiado/Kaputiei North/4043 and 4044 was done without consent thus interfering with the family's lawful claim and use of the land. This issue was determined by the Kajiado District Land Disputes Tribunal TC 522/09/09 and the findings adopted as an order of the Court in Chief Magistrate Land Dispute Tribunal Case No. 60 of 2009. Therefore any dealings were undertaken during the pendency of a court order which had neither been appealed against or set aside.
12. It is his case that, this dispute had already been resolved and the application ought to be dismissed with costs.
13. The Preliminary Objection and the Notice of Motion were canvassed by way of written submissions.

The 1st Defendant's submissions

14. Counsel for the Defendant outlined the following as the issues for determination:
 - i. Whether this Honourable Court has the Jurisdiction to reopen the decision of the Tribunal.
 - ii. Whether this matter is res judicata.
 - iii. Whether the Plaintiff has the locus standi to challenge the prior decision of the Tribunal and the Magistrate Court.



- iv. Whether the applicant has established a prima facie case with probability of success.
 - v. Whether the applicant will suffer irreparable harm that cannot be adequately compensated by an award of damages.
 - vi. Whether the balance of convenience tilts in favour of granting the injunction. Who should bear the costs of the Application.
15. On whether this Court had the Jurisdiction to reopen the decision of the Tribunal and the Magistrate Court, reference was made to the cases of Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR and Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR where the Courts held that jurisdiction flows from either *the Constitution*, legislation, or both and that a Court cannot arrogate itself jurisdiction. Counsel submitted that this Court lacks the jurisdiction to hear and determine the matter because it has already been litigated upon and determined in the Land Dispute Tribunal Case No TC 522/09/09 Wilson Teto Ole Piyanko (Claimant) v Joseph Muigai Wanene (Objector) and Kajiado Chief Magistrates Land Dispute Tribunal Case Number 60 of 2009 Wilson Teto Ole Piyanko v Joseph Muigai Wanene. These decisions were neither challenged, nor Judicial Review proceedings to quash the decision filed. As such, these decisions cannot be impeached through a new suit. Reference was made to Florence Nyaboke Machani v. Mogere Amosi Ombui & 2 others [2014] eKLR.
 16. On whether this suit was res judicata, Counsel submitted that dispute was determined by the Land Disputes Tribunal in favour of the 1st Defendant and that decision was adopted as an order of the Court. As such, the current suit offended Section 7 of the *Civil Procedure Act* citing Alfred Asidaga Mulima & 2 Others v Attorney General & 8 Others [2014] KEHC 930 (KLR).
 17. On whether the Plaintiff has the locus standi to challenge the prior decision of the Tribunal and the Magistrate Court, counsel submitted that the Plaintiff did not have locus standi to institute this suit on grounds that they cannot challenge decisions made by the Tribunal and Magistrate’s Court in a matter they did not participate in. And the Plaintiff, having acquired the property in 2016 from an unknown vendor, cannot overturn a decision made in 2009. This is because the Plaintiff failed to conduct proper due diligence, which would have revealed that ownership had already been adjudicated in favour of the Defendant. Therefore, any grievances should be pursued against the vendor, and not the Defendant.
 18. On whether the Applicant had established a prima facie case with probability of success, it was submitted that the Applicant had failed to demonstrate a legitimate and lawful title traceable through an unbroken chain of ownership from the root title. It was argued that the Tribunal found in favour of the 1st Respondent and that decision was adopted as a judgment of the Court. Therefore, title Kajiado /Kaputiei North/4043, being a subdivision of Kajiado /Kaputiei North /1608, was tainted with illegality and any subsequent subdivisions and transfers flowing from that title were equally null and void ab initio with reference to Munyu Maina v. Hiram Gathiha Maina [2013] eKLR and Dina Management Limited v County Government of Mombasa & 5 others [2021] eKLR.
 19. On whether the applicant will suffer irreparable harm that cannot be adequately compensated by an award of damages, counsel submitted that the Applicant could plead irreparable harm where they hold no valid legal title, as found by the Tribunal. Counsel also argued that the process to acquire title relied upon by the Applicant was negligent and the risk of loss arose from their own want of due diligence. And that third parties who may have purchased parcels from the Applicant was not a shield against legal scrutiny or cancellation of illegally acquired titles. Therefore, the threshold for irreparable harm had not been established.



20. On whether the balance of convenience tilts in favour of granting the injunction, counsel submitted that there was a valid decree and the Applicant had not established how the balance of convenience tilted in their favour. As such, the injunctive relief sought in the application should be dismissed with costs to the 1s Defendant.

The Plaintiff's Submissions

21. Counsel for the Applicant/ Plaintiff submitted on the following as the issues for determination:
- i. Whether the court lacks jurisdiction to hear and determine this suit;
 - ii. Whether this suit is procedurally defective;
 - iii. Whether the Plaintiff has requisite locus standi to bring this suit; and,
 - iv. Whether this suit is res judicata.
22. On whether this court had jurisdiction to determine this suit, Counsel submitted that the argument that the Tribunal's decision could not be impeached should not be entertained because the Plaintiff was not a party to the Dispute Tribunal's suit which decision was adopted by the Magistrate's Court vide a decree dated 29th January 2010. That the Plaintiff did not undertake due diligence was also disputed because the search conducted in 2016 prior to the purchase showed the legal owner of the properties 49483 and 49484 was Cyrus Ndung'u and there was no encumbrance that prevented members of the public from transacting with the said parcels. And this Court had jurisdiction to determine the question ownership of land as per Section 13 of the Environment and Land Act and to issue any orders and / or reliefs it deems fit. As such the reliefs sought were within the jurisdiction of this Court and the suit should be heard and determined accordingly.
23. Counsel also submitted that this Court was being called to declare that the Tribunal's decision and the decree was a nullity because the Tribunal acted in excess of jurisdiction. Reference was made to the case of *Mary Kerubo Ogoti v Chief Magistrate's Court Kisii & 5 others* [2019] eKLR and *Lucy Bosire v Nyankoni Manga Robi* [2014] eKLR where the Court held that "... the tribunal had no jurisdiction to determine disputes over title to or ownership of land. I am therefore in agreement with the submissions by the plaintiff that the tribunal herein acted in excess of its jurisdiction when it entertained the defendant's claim and purported to cancel the plaintiff's title and order that the defendant be registered as the proprietor of the suit property..."
24. Counsel went on to argue that the case of *Florence Nyaboke Machani v Mogere Amosi Ombui, Simon Tengeri Mogere & Nelson Omwenga Nyakundi (Civil Appeal 184 of 2011)* [2014] KECA 384 was distinguishable from the above cited cases because the parties were both part of the proceedings before the Tribunal and were bound by the Appeal procedure. Therefore, striking out the suit would be draconian and against the tenets of Article 159 of the Constitution.
25. On whether the suit was res judicata, it was submitted that the Applicant was not party to the proceedings at the Tribunal pointing out the discrepancy in title 1735 which was the title referenced to at the Tribunal vis a vis title 1608 which was the title giving rise to property 4043 which gave rise to the Plaintiff's property 49843 and 49844. As such, the suit was not res judicata.
26. On the question of locus standi, counsel submitted that Plaintiff was the registered proprietor of the parcels of land known as Kajiado/Kaputiei North/49484 and Kajiado/Kaputiei North /49483 whose titles are under threat of cancellation. Therefore, as the registered owner of the said properties, the Plaintiff has locus to file the suit seeking a declaration of the indefeasibility of the titles they acquired as well as the later sub-divisions thereof.



27. As such, the preliminary objection should be dismissed with costs to the Plaintiff.
28. On whether the Notice of Motion application dated 19th November 2024 was merited, it was submitted that the Applicant's case had a probability of success as held in *Giella vs. Cassman Brown & Company Limited* [1973] E.A 358 and *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR. This is because, the Applicant had demonstrated ownership of parcels 49484 and 49483. The discrepancy in title 1608 and 1735 was also once again raised with counsel arguing that the suit properties were not registered in the 1st Defendant's name but his father's name. As such, the order to cancel their title and register it in the 1st Defendant was flawed as they had legally acquired it. Counsel submitted that the amendment of the decree to alter the award from parcel 1735 to 1608 was not only flawed but changed the character of the suit because that was not the property complained against at the Tribunal. And that the Magistrate's Court did not have jurisdiction to vary, rescind or set aside an award filed citing *Florence Nyaboke Machani v Mogere Amosi Ombui, Simon Tenegeri Mogere & Nelson Omwenga Nyakundi (Civil Appeal 184 of 2011)* [2014] KECA 384. Further, that the Tribunal did not have jurisdiction to order cancellation of titles as held in *Joseph Oginga Onyoni & 2 others v Attorney General & 2 others* [2016] eKLR. The Applicant had therefore demonstrated they had an arguable case.
29. On the issue of irreparable damage, it was submitted that, the Plaintiff which is a Housing Co-operative Society purchased the properties in 2016 and subdivided them into 173 parcels which had since been sold to third parties. If the relief sought is not granted and the titles cancelled, the Plaintiff stood to suffer irreparable loss and damage due to multiple suits against it, which could cause both monetary and reputation damage that could not be compensated by an award of damages.
30. On the balance of convenience, it was submitted that the balance tilted in favour of the Plaintiff who was in possession and occupation of the properties including having sold them off to members of the public.

Analysis and determination

31. I have considered the Preliminary Objection and the Notice of Motion, the rival submissions and the authorities cited and I find the issues for determination are:
 - i. Whether the 1st Defendant's Preliminary Objection dated 20th March 2025 is merited;
 - ii. Whether the Plaintiff's application dated 19th November 2024 for injunctive reliefs is merited;
 - iii. Who should bear the costs?
32. The Court shall begin with making a determination of the Preliminary Objection which could dispose of the suit in limine.
33. It is trite law that a preliminary objection should be on a point of law which can be discerned from the pleadings. The locus classicus on what a preliminary objection should entail is *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 as affirmed by the Supreme Court in *Odinga v Independent Electoral & Boundaries Commission & 3 others* [2013] KESC 8 (KLR).
34. The 1st Defendant/Respondent has raised an objection on grounds that there are valid orders from the Kajiado Land Disputes Tribunal and adopted by the Chief Magistrate's Court. Therefore, this suit was defective and the Court did not have jurisdiction to interfere with those decisions.



35. The Plaintiff contested this objection in their submissions arguing that the Plaintiff was not party to the suit at the Tribunal and adopted by the Lower Court. As such, they could neither file an appeal or a judicial review as argued by the 1st Defendant/Respondent. It is its case that the only way to claim their rights of the suit property was through instituting of a fresh suit. The Plaintiff/Applicant also contested the objection on grounds of its validity arguing that the said award and decree was null since the 1st Defendant was not the owner of the suit properties and had no locus standi to file the complaint. Finally, the Plaintiff contested the objection on grounds that the Tribunal did not have jurisdiction to determine issues of ownership of property and that the Lower Court acted in excess of jurisdiction in interfering with the award of the Tribunal.
36. As stated earlier, a preliminary objection is on a pure point of law based on issues pleaded without delving into the evidence.
37. From the face of the pleadings, it is not in contention that the dispute in respect of the suit properties was addressed by the Land Disputes Tribunal and the Order adopted by the Magistrate's Court. The Plaintiff seeks to have the Plaintiff declared as the lawful proprietor of parcels 49483 and 49484 and an order to declare the award of the Tribunal and decree from the Magistrate Court as null and void. It is on record that the award from the Tribunal and the order from the Magistrate's Court have neither been set aside, appealed against or quashed. However, there is contention into the locus standi of the complainant, and the validity of the award from the Tribunal. The Plaintiff/Applicant has argued that both the Tribunal and the Lower Court acted in excess of their jurisdiction. This meant that the said decisions were null and void and could not be used by the 1st defendant to prevent the Plaintiff from filing this suit seeking for orders against the 1st Defendant.
38. Without getting into the merits of the case, it is on record that there is already contention in respect of the award Tribunal and the decree Lower Court. Therefore, the question of this Court's jurisdiction to determine this suit on grounds that there is an existing valid Court order, shifts from a question of law to a question of fact which goes against the tenets of a preliminary objection. This means that the Court is being called upon to peruse the evidence to ascertain the claim and/or dispute.
39. It is my view that, the Preliminary Objection cannot stand and it is hereby dismissed.
40. The next issue for determination is; whether the Notice of Motion application by the Plaintiff/Applicant dated 19th November 2024 seeking injunctive reliefs is merited.

The principles guiding the grant of temporary injunctions were set out firmly established in *Giella v. Cassman Brown & Co. Ltd* [1973] E.A and bolstered by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn* also known as *Hermannus Phillipus Steyn & Hedda Steyn* [2014] KECA 606 (KLR) where it was held:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

41. The first inquiry, therefore, is whether the Plaintiff/Applicant has established a prima facie case. The jurisprudential standard for what constitutes a prima facie case was laid out in *Mrao Ltd v First*



American Bank of Kenya Ltd & 2 others [2003] eKLR where the Court held that: "...A prima facie case in a civil application includes but is not confined to a 'genuine and arguable case'..."

42. The Plaintiff/Applicant claims that it purchased properties, Kajiado/Kaputiei North/49483 and 49484 in 2016 from one Cyrus Nyori after conducting due diligence. The search shows that indeed the said properties were in his name and the only encumbrance was a charge to Grofin Africa Fund which was lifted once the purchase price was paid. The Plaintiff/Applicant claims that there was no other restriction against the titles and once the charge to Grofin Africa Fund was discharged, the properties were transferred to it and subsequent subdivisions undertaken. That it was only until 2024 when issues against the Titles were brought to their attention.
43. Without getting into the merits of the case, the Court finds that there is an arguable case which requires the Plaintiff/Applicant to ventilate in court.
44. The second condition is; whether the Applicant has demonstrated that they would suffer irreparable harm if the injunctive relief is denied.
45. The Applicant contends that they have been in peaceful possession of the suit properties since 2016 and have proceeded to develop and transfer portions of the land to third parties. The risk of title cancelling the titles would not only cause them significant financial loss but also damage their commercial reputation and expose them to potential third-party claims which could not be compensated by an award of damages.
46. Irreparable harm has been defined as an injury that cannot be adequately compensated through monetary damages or where such compensation would not be a sufficient remedy. Land is not merely a commercial commodity. It holds social, economic, and emotional value. In this case, the Plaintiff's/Applicant's interest is not confined to mere ownership but extends to the legal protection of third-party purchasers. The Court takes judicial notice, of the 173 titles issued from the subdivisions which are at risk of invalidation. The resulting loss and disruption, both to the Plaintiff/Applicant and the public, would be substantial and not easily quantifiable in damages. I find that the Plaintiff/Applicant has demonstrated that it shall suffer irreparable harm if these orders are not granted.
47. The Court must consider in whose favour the balance of convenience tilts.
48. On this limb, the Court must determine which party stands to suffer greater hardship if the injunction is granted or denied, I am guided by Ambwayo J's holding in Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] KEELC 2424 (KLR) where he observed thus;

"...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 would be greater than that which may be caused to the defendants..."
49. From the foregoing, I find that the Plaintiff/Applicant stands to suffer greater inconvenience compared to the 1st Defendant if the injunctive relief is not granted pending hearing and determination of the suit.
50. I therefore, find merit in the Notice of Motion dated 19th November 2024 and I grant the orders sought namely;
 - i. That an order of injunction is hereby issued restraining the Defendants and their agents, employees or representatives from interfering, in whatsoever manner, with the Plaintiff's title to ownership, possession and use of LR No. Kajiado/Kaputiei North/49484, 49483 by way of cancellation of the said title, altering or rectification of the register by doing away with the said title for purposes of reverting and or registering title number Kajiado/Kaputiei North/1608



in the name of the 1st Defendant in execution, implementation or furtherance of the decision and orders arising from Kajiado Chief Magistrate Land Dispute Tribunal Case No. 60 of 2009: Wilson Teto Ole Piyanko vs Joseph Muigai Wanene and Kajiado Land Dispute Tribunal Case No. TC 522/09/09 Wilson Teto Ole Piyanko (Claimant) vs Joseph Muigai Wanene (Objector). Pending hearing and determination of this suit.

- ii. That the Plaintiff is also restrained from further disposing of the sub-divisions to third parties pending hearing and determination of this suit.
- iii. That costs shall abide outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 31ST DAY OF JULY 2025.

L.KOMINGOI

JUDGE

In the presence of:

Mr. Juma for the Plaintiff.

Mr. Ngugi Kamau for the 1st Defendant.

N/A for the 2nd Defendant.

Court Assistant – Mutisya.

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