

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. E041 OF 2025

**KITALE JUA KALI WELFARE
ASSOCIATION-----PLAINTIFF**

VERSUS

**KENYA PRISONS SERVICE-----
1ST DEFENDANT**

**THE ATTORNEY GENERAL-----2ND
DEFENDANT**

RULING

1. The court, by an application dated **1/9/2025**, is asked to:
 - (a) ...spent
 - (b) ...spent
 - (c) Issue an order restraining the defendants from entering, wasting, or interfering with Land Parcel No. Kitale Municipality Block 6/232, or which way, interfering with the plaintiff's quiet possession thereof or its affairs thereon, pending hearing and determination of this suit.
 - (d) A mandatory injunction directed at the defendants to remove the beacons erected on Land Title No. Kitale Municipality Block 6/232.

2. The reasons are contained on the face of the application and in a supporting affidavit of Peter Midimo Agalo, sworn on **1/9/2025**. It is deposed that the plaintiff is the registered lease holder of Land Title No. **Kitale Municipality Block 6/232** since **29/9/2004**, following an allotment letter dated **17/6/1996** and a lease dated **1/6/1996**, copies attached as **AMP-1(a) and (b), 2(a) and (b)**.
3. The plaintiff deposes that before he was allocated the land, he had made a request that was considered, approved, and a survey was conducted on the suitland, and after which he paid the full purchase price as per annexure marked **AMP-3(a) and (b)**.
4. The plaintiff deposes that, having paid for the allotment, the land was surveyed and the relevant map drawn as per department reference **No. KTL 109673** has since been occupying the land. He annexed the development plan and the receipt as **AMP-4(a) and (b)**.
5. Further, the plaintiff deposes that a lease was prepared in his favour and upon his payment of the requisite registration fees, he was registered as the owner of the land.

6. The plaintiff deposes that he has since developed the land by putting up both permanent and semi-permanent structures as per the photos annexed as **AMP-5**. The plaintiff deposes that the impression that the land belongs to the 1st defendant is not true, given that he has also been paying rates and rent to both national and county governments as required in the lease.
7. The plaintiff deposes that sometimes in **November 2024**, the 1st defendant, despite the owner of the suit land being clear through his Kitale Prison officers, visited the land and erected beacons alleging the land to belong to it as per photos annexed as **AMP-6**, and has also threatened to forcefully evict him from the suit land with effect from **2/9/2025** without his consent.
8. The plaintiff deposes that he approached the defendant after the erection of the said beacons, but to no avail, yet the 1st defendant is acting inequitably, maliciously, illegally, fraudulently, with impunity, and unjustifiably, hence infringing on his constitutional rights to private property lawfully acquired and belonging to him.

- 9.** The plaintiff deposes that the defendants' continued invasion of his land and forceful occupation has exposed him to irreparable damage, the damage is real and has caused fear in him, there are acts of trespass to private property, he risks dispossession and denial of use of the land, and the case presents exceptional circumstances to grant the orders sought.
- 10.** Further, the plaintiff deposes that the suit has been brought promptly and in utmost good faith, for he stands to suffer substantial loss, will be subjected to unnecessary expenses and inconvenience, as he has been utilizing the suit land over time and has put up permanent structures on it.
- 11.** The application is opposed by a replying affidavit of Ogutu Leonard Odhiambo, sworn on **1/10/2025**. It is deposed that Kitale Remand Prison was established during the colonial time as detention camp, but later became a remand home, currently renamed Kitale Medium Prison, which occupies part of **Kitale Municipality Block 3** and **6**, where the suit property falls, which two parcels of land were initially reserved for the prison purposes vide Legal Notice **No. 721 of 1961**, and **751 of 1963**, measuring

159.01 acres as per attached annexure **DLO-1(A)** and **(B)**, which parcel of land over time have been encroached by the plaintiff and other persons not before the court from way back in **1980s**.

12. The defendants depose that as a result of the said illegal subdivision and the encroachment as per **PDP No. KTL 10/96/95**, approved plan **393** as provided by the plaintiff, the prison has been allocated **12 acres** and another **12 acres** for the GK Remand Primary School, hence reducing the gazetted prison land from **159.01 acres** to **24 acres**.

13. The defendants depose that following a presidential directive in **January 2024** to relocate Kitale Medium Prison to Kitale Main Prison land for the expansion of Kitale town, the prison authority in collaboration with the County Security Committee conducted a demarcation exercise of the gazetted prison land relying on the survey plans of the abuttal and overlaid on the google earth which resulted to satellite imagery attached as **OLO-2**.

14. Further, the defendants depose that following the presidential directive on **5/12/2022** to survey and title all prison land, parcels all over Kenya, there was a successful demarcation of the prison land

measuring **159.01 acres**. A copy of the presidential directive is attached as **OLO-3(A), (B), and (C)**.

- 15.** The defendants depose that as a result of the said demarcation exercise, the affected persons were identified for a peaceful engagement process of vacating the land to enable the prison authority to process its titles upon successful cancellation of the illegal titles.
- 16.** The defendants depose that on several occasions, the officer in charge of the Kitale Main Prison has engaged the plaintiff and others who have encroached the prison land for an amicable solution. However, it is deposed that the plaintiff has decided to seek the court's intervention, whereas others have requested more time to peacefully move out of the gazetted prison land as per attached copies of letters, seeking extension of time, marked **OLO-4(a) and (b)**.
- 17.** The defendant depose that the prison facility is a protected area that requires heightened security measures with controlled movement in and out of the facility using a single point of entry with permission of the officer in charge, who has to ensure the

security measures are upheld by reinforcing all the porous entries leading to the prison facility.

- 18.** The defendants depose that the land parcel No. **Kitale Municipality Block 6/232** is part of the gazetted Kitale Medium Prison land falling under **Block 3**, which was never degazetted or otherwise lawfully alienated, hence the grant and or certificate of lease obtained by the plaintiff was illegal and or irregularly acquired.
- 19.** The defendants depose that the plaintiff has not tendered any evidence to show that the suit land is distinct from gazetted **159.01 acres** of the reserved prison land, otherwise his acquisition of the land was unprocedural as for the land was never available for alienation by way of subdivision into **174** parcels, (**60** parcels from **Block 6** and **114** parcels from **Block 3**), and which were allocated to private individuals or entities.
- 20.** Equally, the defendants depose that there are court decisions in place cancelling all entries and titles that were issued unprocedurally on the gazette Kitale Medium Prison land, attached as annexures **OLO-5 (A) and (B)** in **Kitale ELC No. 153 of 2016, ELC No. 115 of 2018**, hence the plaintiff is not entitled

to any interim orders and was never gazetted for reallocation for individual use. The procedure to recover land illegally obtained or trespassed into, or public land occupied by encroachers, is **Section 152A-I** of the Land Act.

- 21.** In **Kenya Railway Corporation -vs- Birah & 14 others & Others Civil Appeal No. E206 OF 2021 [2025] KECA 545 [KLR] (21st March 2025) (Judgment)**, the appellant had alleged that the suit property was designated and reserved for the Kibos Railway Settlement and was not unalienated land as per the Government Land Act, so that no way it could have been alienated in favour of the protection by the law.
- 22.** Notices had been given to vacate and or remove the alleged illegal structures. The trial court found the acts of the appellant to evict the respondents in violation of **Article 40** of the Constitution, due to the existing long-term license, since **1937**, and also contrary to **Section 152B** of the Land Act, which provides that eviction should be conducted in accordance with the Act and any unlawful occupation of private, county or public land shall be evicted in accordance with the Act.

- 23.** On appeal, the court affirmed that the legal provisions for an eviction from public land are **Section 152C** of the Land Act, by notifying the evictees in writing by notice in the gazette and in one newspaper with nationwide coverage, at least **3** months before eviction.
- 24.** The court held that the respondent's right to housing was violated as their houses were demolished without considering their welfare, as enshrined in **Article 43** of the Constitution.
- 25.** In litigation, the adversary is likely to prolate or infringe. Irreparable loss is more than a mere apprehension or fear. It must be real and apparent. It cannot be quantified by way of damages. It must be based on worthy or credible evidence.
- 26.** In **Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd & Others [2016] eKLR**, the court held that the injury must be irreparable and continuous, substantial, and incapable of being remedied or atoned for by damages.
- 27.** As to the balance of convenience, it is defined in **Pius K. Kogo -vs- Frank Kimeli Tenai [2018] eKLR**, as that if the injunction is not granted, and the suit is ultimately decided in favour of the plaintiff, the

latter will be inconvenienced more as compared to the defendant, if the injunction is granted and the suit ultimately dismissed. The court said that the plaintiff must 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 it.

28. Turning to this suit, what the plaintiff has said is that he holds a valid title which was lawfully, regularly, procedurally, and legally acquired.
29. The plaintiff has attached the paper trail to his title. It is trite that when a title is under challenge, it is not enough to waive the instrument of title, but a party has to go behind the instrument and show that the title was obtained regularly, formally, procedurally, and without any encumbrance. **Dina Management Ltd -vs- County Government of Mombasa & Others [2023] KESC 30 KLR.**
30. The plaintiff deposes that since the issuance of title, he has occupied the suit land unimpeded, developing the same with no notice to vacate, or issuance of orders to vacate the land, until the defendants in **November 2024**, trespassed into his land, demarcated and erected beacons therein, and have

threatened to forcefully evict him without due process.

31. On the other hand, the defendants are saying that the title documents held by the plaintiff were irregularly acquired from land initially reserved for prison use.
32. A party seeking interim orders of injunction has to demonstrate a *prima facie* case with a probability of success at the hearing, show that it will suffer irreparable loss in the absence of an injunction, and lastly that the balance of convenience tilts in favour of granting the orders sought.
33. A *prima facie* case is established where, looking at the material presented, there is a right which has been violated or breached, or infringed, to call for a rebuttal from the opposite party. In **Mrao Ltd -vs- First American of (K) Ltd [2003] eKLR**, the court held that a *prima facie* case must be a genuine and arguable case with a probability of success at the trial. In establishing the same, a court, as held in **Nguruman Ltd -vs- Jan Bonde Nielsen & Others [2014] eKLR**, need not conduct a mini-trial, but based on evidence of the affidavits presented to see

if there is some interest or right belonging to the applicant that needs to be ventilated at the hearing.

34. In **Dr. Simon Waiharo Chege -vs- Paramount Bank of Kenya Ltd, Nairobi (Milimani) HCCC No. 360 of 2001**, the court said that the remedy of injunction is one of the greatest equitable reliefs issued in an appropriate case to protect the legal and equitable right of a party.
35. The defendants have relied on **Glenview Holdings Ltd -vs- Management Committee GK Remand Prison Primary School & Others ELC No. 195 of 2018 [2025] KEELC 3316 [KLR] (2nd April 2025) (Judgment)**. The suit was in relation to **L.R. No. 2116/953** and not in relation to **Kitale Municipality Block 6/232**.
36. In **Weru & 2 others (Suing on Their Own Behalf and Residents of Ninaami Estate, Plot Owners Community Based Organization Certificate No. DSD/26/138/02/135401) -vs- County Government of Trans Nzoia & 3 others [2025] KEELC 6971 (KLR)**, the court held that the Constitution and the law has set the bare minimum on fair administrative acts and that it is against public policy and also international laws under

Article 2 and 43 of the Constitution, to infringe on the right to property without adherence to the law.

37. Revocation of titles held by the applicant as illegally obtained is a legal process donated only to a court of law under **Section 80 (1)** of the Land Registration Act. As to the powers of the Land Registrar under **Section 79** of the Land Registration Act to rectify or direct the rectification of a land register or document where the document has been obtained through fraud.

38. The court in **Super Nova Properties Limited & another -vs- District Land Registrar Mombasa & 2 others; Kenya Anti-Corruption Commission & 2 others (Interested Parties)** **[2018] KECA 17 (KLR)**, the court observed that the correct interpretation of **Sections 79 and 8** of the Land Registration Act is that the registrar has no power to revoke or cancel titles on account of illegality or fraud except a court of law through

elaborate pleadings and strict proof as per *Kinyanjui Kamau -vs- George Kamau [2015] eKLR.*

- 39.** In this suit, the defendants have not attached any decision of the court canceling or invalidating the plaintiff's certificate or title. Evidence of a certificate of lease or title is enough proof in a court that the person indicated therein has absolute proprietary rights in a court of law in the absence of proof of fraud or illegality.
- 40.** The court finds that the plaintiff has established a prima facie case. As to demolition or eviction before due process is followed, I think there would be irreparable loss or damage if the court does not issue the orders sought. The plaintiff would suffer or be inconvenienced more in the absence of a temporary injunction.
- 41.** The upshot is that the application dated **1/9/2025** is allowed in terms of **prayer (c)**. For purposes of

clarity, an order is hereby issued restraining the defendants from entering, wasting, or interfering with Land Parcel No. **Kitale Municipality Block 6/232**, or interfering with the plaintiff's quiet possession thereof or its affairs thereon, to last for **one (1) year** only.

42. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **12th** day of **November 2025**.

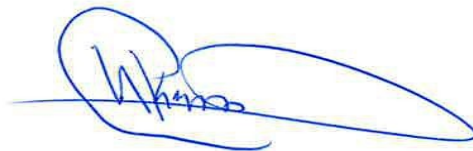
In the presence of:

Court Assistant - Dennis

Majanga for plaintiff present

Plaintiff present

Defendants absent



**HON. C.K. NZILI
JUDGE, ELC KITALE.**