



REPUBLIC OF KENYA



**Lipton Teas and Infusions Kenya Plc v Mokal Investments Limited & 15 others (Environment and Land Case E014 of 2022) [2025] KEELC 7812 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7812 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND CASE E014 OF 2022  
LA OMOLLO, J  
NOVEMBER 13, 2025**

**BETWEEN**

**LIPTON TEAS AND INFUSIONS KENYA PLC ..... PLAINTIFF**

**AND**

**MOKAL INVESTMENTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**  
**ANTHONY NGETICH ..... 3<sup>RD</sup> DEFENDANT**  
**LANDO AGENCIES LIMITED ..... 4<sup>TH</sup> DEFENDANT**  
**ANDREW CHERUIYOT ROTICH ..... 5<sup>TH</sup> DEFENDANT**  
**CHILILEK ENTERPRISES LIMITED ..... 6<sup>TH</sup> DEFENDANT**  
**LEONARD KIMUTAI NGERECHI ..... 7<sup>TH</sup> DEFENDANT**  
**SIMON KIPTOO SIGILAI ..... 8<sup>TH</sup> DEFENDANT**  
**KERIWEST SUPPLIES ENTERPRISES LTD ..... 9<sup>TH</sup> DEFENDANT**  
**TIME STAR LIMITED ..... 10<sup>TH</sup> DEFENDANT**  
**EZEKIEL KIPKOECH TONUI ..... 11<sup>TH</sup> DEFENDANT**  
**JOHNSTONE KIPKEMOI CHEBOCHOK ..... 12<sup>TH</sup> DEFENDANT**  
**FATUMA ALI ABDULREHMAN ..... 13<sup>TH</sup> DEFENDANT**  
**BYMARK GENERAL ENTERPRISES LIMITED ..... 14<sup>TH</sup> DEFENDANT**  
**SILVERLINE CONTRACTORS LIMITED ..... 15<sup>TH</sup> DEFENDANT**  
**BELTED HOLDINGS LIMITED ..... 16<sup>TH</sup> DEFENDANT**



## RULING

### Introduction.

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 13<sup>th</sup> January, 2025 and the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents Preliminary Objection dated 17<sup>th</sup> January, 2025.
2. The Notice of Motion application dated 13<sup>th</sup> January, 2025 is expressed to be brought under Articles 40 & 159 (2) of *the Constitution* of Kenya, Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Section 13 of the *Environment and Land Court Act* and Order 40 Rule 1 & Order 51 Rule 1 of the Civil Procedure Rules.
3. The application seeks the following orders;
  1. Spent
  2. Spent
  3. Spent
  4. That pending the hearing and determination of the Applicant's joinder application and the suit, this Honourable Court be pleased to issue a temporary injunction restraining the Defendants and the proposed Defendants either by themselves, servants, and/or employees, their agents and/or representatives and any other person from entering, remaining upon or trespassing upon, cutting down or removing trees or any other thing, disposing off, alienating, encumbering charging or in any other manner interfering with all that property known as LR No. 9932/2. LR No. 9932/7 or LR No. 9932/8-22 or any other subdivisions of LR 9932/7.
  5. That this Honourable Court be pleased to direct the Kericho County Police Commander/Coordinator to supervise the enforcement of the order sought in prayers (sic) (4) above.
  6. That the costs of this application be provided for.
4. The application is based on the grounds on its face and the supporting affidavit of Jonathan Mwita Wangubo sworn on 13<sup>th</sup> January, 2025.
5. The Preliminary Objection dated 17<sup>th</sup> January, 2025 is on the following grounds;
  - a. That this Honourable Court delivered a lengthy ruling on 15<sup>th</sup> day of June, 2023 pronouncing itself on the pertinent issue of validity of the respective titles in this matter which ruling also effectively disposed of the suit altogether rendering this Honourable Court functus officio and the application res judicata as envisaged in Section 7 of the *Civil Procedure Act* Cap 21.
  - b. That dissatisfied with the decision of this Honourable Court, the Plaintiff/Applicant proffered an appeal against the said ruling which appeal is still pending before the appellate Court hence the suit is sub judice before the Court of Appeal. In the intervening period this Honourable Court has no jurisdiction to entertain the instant application and must down its tools and freeze awaiting further orders of the appellate Court.

### Factual Background.

6. The Plaintiffs/Applicants commenced the present proceedings vide the Plaint dated 11<sup>th</sup> October, 2020. The Plaint was amended in June, 2024 and further Amended on 20<sup>th</sup> February, 2025.



7. The Plaintiff/Applicant seeks the following prayers;
- aa) A declaration that LR 9932/2 (Grant No. No (sic) 83721) a valid and existing title.
    - a. A declaration that the Plaintiff is the only lawful and registered proprietor of the property known as LR No. 9932/2, and all the excisions arising therefrom, and that the said parcel of land is private property;
    - b. A declaration that the lease dated 28<sup>th</sup> April, 2022 in respect of LR 9932/7 and the Certificate of Title dated 10<sup>th</sup> May, 2022 in respect of LR No. 9932/7 held by the 1<sup>st</sup> Defendant and any other person are null and void.
  - bb) A declaration that the certificates of title and lease with respect to LR 9932/8, LR 9932/9, LR 9932/10, LR 9932/11, LR 9932/12, LR 9932/13, LR 9932/14, LR 9932/16, LR 9932/17, LR 9932/18, LR 9932/19, LR 9932/20, LR 9932/21, LR 9932/22 or any other purported evidence of proprietorship arising from any parcel of land that is a sub-division of LR 9932/7 or any other excision of LR 9932/2 is null and void.
  - c. A permanent injunction restraining the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> to 16<sup>th</sup> Defendants either by themselves, servants and/or employees, their agents, and/or representatives from entering, remaining upon and/or trespassing on all that property known as LR No. 9932/2, cutting trees, removing trees or any other thing, disposing, alienating, encumbering, charging, interfering, transferring or in any other way howsoever dealing with all that property known as LR No. 9932/2;
  - d. An order directing the 2<sup>nd</sup> Defendant to recall the lease dated 28<sup>th</sup> April, 2022 in respect of LR 9932/7 and the Certificate of Title dated 10<sup>th</sup> May, 2022 issued to the 1<sup>st</sup> Defendant and any other persons in respect of LR 9932/7 and to revoke the same within fourteen (14) days of the judgement date, failure to which the lease and Certificate of Title to stand revoked;
 

An order directing the 2<sup>nd</sup> Defendant to recall the Certificates of Title and lease with respect to LR 9932/8, LR 9932/9, LR 9932/10, LR 9932/11, LR 9932/12, LR 9932/13, LR 9932/14, LR 9932/16, LR 9932/17, LR 9932/18, LR 9932/19, LR 9932/20, LR 9932/21, LR 9932/22 issued to the 3<sup>rd</sup> to 16<sup>th</sup> Defendants and to revoke the same within fourteen (14) days of the judgement date, failure to which the lease and Certificate of Title to stand revoked.
  - e. General damages for trespass;
  - f. Special damages in the sum of Kes. 4,300,000.
  - g. Interest on (e) and (f) from the date of filing this suit until payment in full.
8. The 1<sup>st</sup> Defendant/Respondent filed its Statement of Defence dated 24<sup>th</sup> October, 2022 which was amended on 10<sup>th</sup> June, 2024. It denies the averments in the Amended Plaintiff and prays that the Plaintiff/Applicant's suit be dismissed with costs.
9. The 2<sup>nd</sup> Defendant/Respondent filed its Statement of Defence dated 8<sup>th</sup> February, 2022 which was subsequently amended on 25<sup>th</sup> September, 2024. It denies the averments in the Amended Plaintiff and prays that the Plaintiff/Applicant's suit be dismissed with costs.
10. As at the time of writing of this ruling the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents have not filed their Statement of Defence.



11. The application under consideration first came up for hearing on 14<sup>th</sup> January, 2025 when the Court directed that it be served upon the Defendants/Respondents.
12. The application came up for hearing on 11<sup>th</sup> February, 2025 which hearing was rescheduled to 6<sup>th</sup> March, 2025.
13. On 6<sup>th</sup> March, 2025 the Court was informed that in response to the application, the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents had filed the Preliminary Objection dated 17<sup>th</sup> January, 2025.
14. The Court issued directions that the application and the preliminary objection be heard together and by way of written submissions.
15. Counsel for the 2<sup>nd</sup> Defendant/Respondent informed the Court that he will not be participating in the hearing of the application and Preliminary Objection.
16. The matter was mentioned to confirm filing of submissions on 30<sup>th</sup> April, 2024 and then reserved for ruling.

### **The Plaintiff/Applicant's Contention.**

17. The affidavit in support of the application is sworn by Jonathan Mwita Wangubo the Plaintiff/Applicant's General Counsel Plantations.
18. He contends that the Plaintiff/Applicant is the registered owner of the suit property and has been in occupation since 1<sup>st</sup> December, 1957. He goes on to state that the Plaintiff/Applicant has a lease of 999 years.
19. He also contends that the Plaintiff/Applicant has planted trees on the suit parcel for sale and/or for use in its tea processing plants.
20. He further contends that the 1<sup>st</sup> Defendant/Respondent unlawfully accessed the suit parcel and cut down the Plaintiff/Applicant's trees while alleging that it was the owner of the land. He goes on to state that the 1<sup>st</sup> Defendant/Respondent made the said allegations while relying on the title documents of LR 9932/7.
21. It is his contention that the Plaintiff/Applicant filed the present suit to invalidate the 1<sup>st</sup> Defendant/Respondent's title.
22. It is also his contention that the Court of Appeal in Nakuru Civil Appeal (Application) E052 of 2023 issued an order restraining the 1<sup>st</sup> Defendant/Respondent and/or its servants and/or agents from entering, remaining or trespassing upon, cutting down or removing trees or any other thing, disposing of, alienating, encumbering, charging, or in any manner interfering with the suit property.
23. It is further his contention that on 26<sup>th</sup> October, 2024 the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents and/or their agents invaded the suit parcel for the purposes of ascertaining and fixing beacons on land parcel No's LR 9932/8, LR 9932/9, LR 9932/10, LR 9932/11, LR 9932/12, LR 9932/13, LR 9932/14, LR 9932/16, LR 9932/17, LR 9932/18, LR 9932/19, LR 9932/20, LR 9932/21 and LR 9932/22 while alleging that they were owners of the said parcels of land. He goes on to state that the said titles appear to be subdivisions of LR 9932/7.
24. He contends that the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents presented Court orders issued on 22<sup>nd</sup> October, 2024 in Kericho ELC Miscellaneous Civil Application No. E023 of 2024. He goes on to state that the said orders were issued on the basis that the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents alleged that they owned the said parcels of land.



25. He also contends that the said Court order directed the Deputy County Commissioner, Kipkelion East and the OCPD, Londiani Police Division to provide security to Emenkei Techno Services Limited for the intended exercise of ascertaining and fixing the boundaries on the said parcels of land.
26. He further contends that the Plaintiff/Applicant filed an application dated 1<sup>st</sup> November, 2024 in ELC Misc Application No. E023 of 2024 seeking for the Court to set aside the said order. He adds that thereafter, the Plaintiff/Applicant filed the application dated 29<sup>th</sup> November, 2024 in the present suit seeking to amend its Plaint to include the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents.
27. It is his contention that the Plaintiff/Applicant's application dated 1<sup>st</sup> November, 2024 filed in ELC Misc Application No. E023 of 2024 was coming up for ruling on 20<sup>th</sup> February, 2025 while its application to amend the Plaint was coming up for hearing on 11<sup>th</sup> February, 2025.
28. It is also his contention that on or about the 19<sup>th</sup> December, 2024 and 10<sup>th</sup> January, 2025 the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents allegedly entered the suit parcel and begun cutting down the Plaintiff/Applicant's trees.
29. It is further his contention that the Plaintiff/Applicant served the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents with the order issued by the Court of Appeal but they continued to rely on the Court order issued in ELC Misc Application No. E023 of 2024 to justify their actions. He goes on to state that they expressed their intention to continue cutting down the Plaintiff/Applicant's trees.
30. He contends that the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents reliance on the said Court order is misplaced as the Court order only permitted an exercise to ascertain and fix boundaries. He goes on to state that the said Court order did not authorize the cutting down of trees.
31. He also contends that the Plaintiff/Applicant reported the said issue to Kericho Police Station and they initially provided the Plaintiff/Applicant with protection but has since then not taken any further action to stop the said activities.
32. He further contends that the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents actions have violated or threatened to violate the Plaintiff/Applicant's right to the protection of its property enshrined under Article 40 of *the Constitution* of Kenya.
33. It is his contention that the Plaintiff/Applicant has a prima facie case with high chances of success and should be allowed to ventilate the same.
34. It is also his contention that unless the orders sought herein are granted, the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents will continue to trespass on the suit parcel and continue to destroy the Plaintiff/Applicant's property to the Plaintiff/Applicant's detriment.
35. It is further his contention that the Plaintiff/Applicant stands to suffer irreparable loss and injury which cannot be adequately compensated by an award of damages if the orders sought are not granted.
36. It is his contention that the Plaintiff/Applicant is apprehensive that unless the orders sought are granted, its trees will be harvested and its tea processing operations will be interrupted due to lack of fuel wood(sic).
37. It is also his contention that the balance of convenience tilts in favour of granting the orders sought.
38. It is further his contention that the wider interest of justice will be served if the orders sought are granted.



39. He ends his deposition by stating that the Plaintiff/Applicant seeks that the Court issues a temporary injunction restraining the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents from interfering in any way with the suit parcel pending the hearing and determination of the application dated 29<sup>th</sup> November, 2024. He goes on to state that this will allow for the resolution of the ownership dispute without further interference with the suit parcel.

**The 1<sup>st</sup> Defendant/Respondent's response.**

40. In response to the application, the 1<sup>st</sup> Defendant/Respondent filed Grounds of Opposition dated 16<sup>th</sup> February, 2025. They are as follows;
- a. That the application is res judicata based on Section 7 of the *Civil Procedure Act* Cap. 21 as the superior Court had already pronounced itself in a ruling delivered on the 15<sup>th</sup> June, 2023 by dismissing a similar motion for injunction by the Plaintiff.
  - b. That the orders sought to bar persons from remaining on the land are in the nature of an interlocutory mandatory injunction which cannot be granted in the absence of a pleading in the Plaint and the failure to meet the tenets applicable.
  - c. That the issues relating to the order made in Kericho ELC. Miscellaneous Civil Application No. E023 of 2024 cannot be taken up in the record of this suit to constitute a basis for an injunction as a challenge to an order ought to be taken up in the proceedings in which it was made.

**Issues for Determination.**

41. The Plaintiff/Applicant filed its submissions on 3<sup>rd</sup> April, 2025, the 1<sup>st</sup> Defendant/Respondent filed its submissions on 17<sup>th</sup> April, 2025 while the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents filed their submissions on 8<sup>th</sup> April, 2025.
42. The Plaintiff/Applicant submits on the following issues;
- a. Whether the Plaintiff/Applicant has satisfied the criteria for grant of a temporary injunction pending hearing and determination of this suit.
  - b. Whether the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents preliminary objection has merit.
  - c. Who is to bear costs of the application.
43. On the first issue, the Plaintiff/Applicant relies on the judicial decisions of *Giella v Cassman Brown* [1973] EA 358 and *Muhia Daniel Kimeu & another v Equity Bank Kenya Limited & another* [2017] eKLR.
44. On whether it has established a prima facie case, the Plaintiff/Applicant relies on the judicial decision of *Nguruman Limited vs Jan Bonde Nielson & 2 Others* [2014] eKLR and submits that it has been in occupation of the suit parcel since the year 1957.
45. The Plaintiff/Applicant also submits that it has planted tea bushes and eucalyptus trees on the suit parcel.
46. The Plaintiff/Applicant further submits that on 19<sup>th</sup> December, 2024 and 10<sup>th</sup> January, 2025, the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents invaded the suit parcel and started cutting down trees.



47. It is the Plaintiff/Applicant's submissions that it has presented a copy of its title, alleged fraudulent acquisition of the suit parcel by the Defendants/Respondents and availed a copy of a ruling delivered by the Court of Appeal restraining the 1<sup>st</sup> Defendant/Respondent and its agents from trespassing onto the suit parcel.
48. It is also the Plaintiff/Applicant's submissions that it has therefore established a prima facie case.
49. On whether it will suffer irreparable harm which cannot be adequately compensated by an award of damages, the Plaintiff/Applicant relies on the judicial decision of Mathira Water & Sanitation Company Limited v Steve N. Murimi & 3 Others [2016] eKLR and while reiterating its averments in its affidavit in support of the application submits that unless a temporary injunction is issued, the 3<sup>rd</sup> to 16<sup>th</sup> Defendants are likely to renew their attempts of trespass.
50. The Plaintiff/Applicant also submits that the continued trespass will inflict upon it irreparable injury which cannot be remedied by an award of damages. This is because, the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents might disrupt its tea harvesting and processing operations which might not only lead to job losses but also displace numerous individuals thereby destabilizing their livelihood.
51. The Plaintiff/Applicant further submits that a significant portion of the destroyed trees take years to mature and that no amount of damages will be adequate compensation for the environmental impact of cutting down the said trees.
52. The Plaintiff/Applicant relies on the judicial decision of Amir Suleiman v Amboseli Resort Limited [2004] eKLR and submits that the balance of convenience tilts in its favour.
53. The Plaintiff/Applicant submits that at the hearing, the Chief Land Registrar will be called to give evidence and verify from the records how the 1<sup>st</sup> Defendant/Respondent acquired its purported title to the suit parcel and how the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents subsequently obtained the resultant subdivisions.
54. The Plaintiff/Applicant also submits that if the Court finds that it is the rightful owner and the Court would not have issued an injunction, then justice will not be seen to be done.
55. On the second issue, the Plaintiff/Applicant relies on the judicial decisions of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors [1969] EA 696, Quick Enterprises Ltd vs Kenya Railways Corporation Kisumu HCC No. 22 of 1999 as was cited in Oduor v Kalvinder Singh Bhullar & Company Advocates [2023] eKLR and submits that the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents preliminary objection is premised on the ground that the Court already pronounced itself in its ruling delivered on 15<sup>th</sup> June, 2023 on the validity of the titles in this matter.
56. It is the Plaintiff/Applicant's submissions that the ruling delivered on 15<sup>th</sup> June, 2023 was on an interlocutory application and therefore the rights of the parties were not conclusively determined.
57. The Plaintiff/Applicant submits that the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents also raise the issue of res judicata. The Plaintiff/Applicant relies on Section 7 of the *Civil Procedure Act*, the judicial decision of Independent Electoral & Boundaries Commission & Maina Kiai & 5 Others [2017] eKLR and submits the application under consideration raises new issues that were not before the Court in the ruling delivered on 15<sup>th</sup> June, 2023.
58. The Plaintiff/Applicant submits that in the application under consideration, it is seeking for an injunction to restrain the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents who have invaded the suit parcel while alleging that they own LR 9932/8-22.



59. The Plaintiff/Applicant also submits that the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents were not parties to the previous application and their titles which are purported to be resultant subdivisions of the suit parcel were not in the picture.
60. The Plaintiff/Applicant further submits that an application for temporary injunction cannot be deemed as res judicata if the main suit is still pending.
61. It is the Plaintiff/Applicant's submissions that the nature of injunctive relief allows for fresh applications to be made if new facts arise that materially affect the rights of the parties. The Plaintiff/Applicant relies on the judicial decision of Lali Swaleh Lali & Others vs. Stephen Mathenge Wachira & Others, Civil Application No. NAI. 257 of 1994 as was cited in Uhuru Highway Development Limited v Central Bank of Kenya, Exchange Bank Ltd (In voluntary Liquidation) & Kamlesh Pattni [1996] KECA 102 (KLR) and Suleiman Said Shabhai vs Independent Electoral & Boundaries Commission & 3 Others [2014]eKLR in support of its submissions.
62. The Plaintiff/Applicant submits that the 1<sup>st</sup> Defendant/Respondent contends that it (Plaintiff/Applicant) is seeking for a mandatory injunction to bar certain people from remaining on the suit parcel.
63. The Plaintiff/Applicant also submits that it is only seeking for a prohibitory injunction as it does not require the Defendants/Respondents to take any positive action.
64. The Plaintiff/Applicant relies on the judicial decisions of Bandari Investments & Co. Ltd vs Martin Chiponda & 139 Others [2022] eKLR, Nation Media Group & 2 Others vs John Harun Mwau [2014] KECA 308 (KLR) and urges the Court to dismiss the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondent's preliminary objection with costs.
65. The Plaintiff/Applicant relies on Section 27 of the [Civil Procedure Act](#) and urges the Court to allow its application with costs.
66. The 1<sup>st</sup> Defendant/Respondent in its submissions relies on the judicial decisions of Giella vs Cassman Brown Co. Ltd (1973) EA 358 and submits that the Plaintiff/Applicant must first demonstrate that it has a prima facie case.
67. The 1<sup>st</sup> Defendant/Respondent relies on the judicial decision of Mrao Ltd v First American Bank of Kenya Limited & 2 Others [2003] eKLR and submits that the Plaintiff/Applicant must demonstrate that it has a legal right which has been infringed so as to call for a rebuttal by the Respondents.
68. The 1<sup>st</sup> Defendant/Respondent submits that the Plaintiff/Applicant's application is res judicata as the Court already pronounced itself in the ruling delivered on 15<sup>th</sup> June, 2023.
69. The 1<sup>st</sup> Defendant/Respondent relies on the judicial decision of E.T v Attorney general & another [2012] eKLR as was cited in Nancy Mwangi T/a Worthlim Marketers v Airtel Networks (K) Ltd (Formerly Celtel Kenya Ltd) & 2 Others [2014] eKLR in support of its submissions.
70. The 1<sup>st</sup> Defendant/Respondent submits that orders that bar persons from remaining on land are in the nature of an interlocutory mandatory injunction which cannot be granted in the absence of such a prayer in the Plaintiff.
71. The 1<sup>st</sup> Defendant/Respondent relies on the judicial decisions of Shah v Shah (1981) KLR 374, Kenya Breweries Ltd & another v Washington O. Okeyo [2002] eKLR and submits that the issue of whether or not the Plaintiff/Applicant is the owner of the suit parcel is under challenge which makes it impossible for the Court to grant a mandatory injunction.



72. The 1<sup>st</sup> Defendant/Respondent relies on the judicial decision of *Nguruman Limited v Jan Bonde Nielson & 2 Others* [2014] eKLR and submits that the Plaintiff/Applicant has not demonstrated that he stands to suffer irreparable harm which cannot be adequately be compensated by an award of damages.
73. The 1<sup>st</sup> Defendant/Respondent also submits that the balance of convenience does not tilt in favour of the Plaintiff/Applicant as it is no longer in occupation of the suit parcel.
74. The 1<sup>st</sup> Defendant/Respondent further submits that the Court should take judicial notice that the Court already delivered its decision in *Kericho ELC Misc. Application No. E023 of 2024* where it declined to join the Plaintiff/Applicant in the said matter.
75. The 1<sup>st</sup> Defendant/Respondent concludes its submissions by urging the Court to dismiss the Plaintiff/Applicant's application with costs.
76. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents submit that this Court delivered a ruling on 15<sup>th</sup> June, 2023 where it dismissed the Plaintiff/Applicant's application dated 11<sup>th</sup> October, 2022.
77. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents also submit that the Plaintiff/Applicant was dissatisfied with the said decision and it filed an appeal at the Court of Appeal together with an application seeking orders of injunction.
78. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents further submit that on 27<sup>th</sup> October, 2023, the Court of Appeal issued an injunction restraining the 1<sup>st</sup> Defendant/Respondent from interfering with LR No. 9932/2 pending the hearing and determination of the appeal.
79. It is the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents submissions that the application under consideration is sub judice and the Court should down its tools as the matter is pending before the Court of Appeal.
80. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents rely on Section 6 of the *Civil Procedure Act* and submit that the prayers sought in the application under consideration are similar to the prayers that were sought by the Plaintiff/Applicant in its application dated 19<sup>th</sup> June, 2023 that was filed before the Court of Appeal.
81. It is the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents submissions that that they will be prejudiced as they are not parties to the said appeal and they cannot therefore participate in the said proceedings.
82. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents also submit that the Plaintiff/Applicant's application is res judicata and therefore this Court is functus officio.
83. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents then set out a summary of the Plaintiff/Applicant and the 1<sup>st</sup> Defendant/Respondent's pleadings.
84. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents set out extensively the ruling of this Court delivered on 15<sup>th</sup> June, 2023 and submit that the Court disposed of the suit in the said ruling.
85. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents submit that the Chief Land Registrar has taken the position that LR 9932/2 is no longer in existence and their joinder to the suit will not salvage the Plaintiff/Applicant's suit.
86. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents conclude their submissions by urging the Court to vacate all the orders it has issued since the Court of Appeal delivered its ruling on 27<sup>th</sup> October, 2023.



## Analysis and Determination.

87. I have considered the Plaintiff/Applicant's application, the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents preliminary objection, the 1<sup>st</sup> Defendant/Respondent's response and the rival submissions. It is my view that the following issues arise for determination;
- a. Whether the 3<sup>rd</sup> -16<sup>th</sup> Defendant/Respondents Preliminary Objection is merited.
  - b. Whether this court should grant the orders of temporary injunction in light of the ruling delivered by this court on 15<sup>th</sup> June, 2023 and further in light of the ruling of the Court of Appeal delivered on 27<sup>th</sup> October, 2023.
  - c. Who should pay costs of this application and the Preliminary Objection.
88. In determining this matter, the Preliminary objection shall be dealt with first and if found to be merited, it shall not be necessary to determine the application.

### A. Whether the 3<sup>rd</sup> -16<sup>th</sup> Defendant/Respondents Preliminary Objection is merited.

89. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents contend in ground one of their Preliminary Objection that the application under consideration is res judicata for the reason that this Court already pronounced itself on the validity of the Plaintiff/Applicant's title which had the effect of disposing of the suit.
90. The 1<sup>st</sup> Defendant/Respondent also contends that the Plaintiff/Applicant's application is res judicata for the reason the Court delivered a ruling on 15<sup>th</sup> June, 2023 where it dismissed a similar application seeking orders of injunction.
91. The Plaintiff/Applicant submits that the Court did not pronounce itself on the validity of the titles in the present suit in the ruling delivered on 15<sup>th</sup> June, 2023.
92. The Plaintiff/Applicant also submits that the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents were not parties to the said application and that the subject matter in both applications are different.
93. The judicial decision of *Ushago Diani Investment Limited v Abdulwahab* (Environment & Land Case 12 of 2023) [2023] KEELC 20213 (KLR) (27 September 2023) (Ruling) cited with approval *Oraro v Mbaja* [2005] eKLR 141 where the Court, on the nature of Preliminary Objections, held as follows on;
- “A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.” (Emphasis mine)
94. Section 7 of the *Civil Procedure Act* provides as follows;

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court



competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.” (Emphasis mine)

95. In *Communications Commission of Kenya & 5 others - v- Royal Media Services Limited & 5 others* [2014] eKLR the Supreme Court expressed itself as follows on the issue of res judicata:

“(317) The concept of res judicata operates to prevent causes of action, or issues from being re-litigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings....

[319] There are conditions to the application of the doctrine of res judicata:

- (i) the issue in the first suit must have been decided by a competent Court;
- (ii) the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and
- (iii) the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title *Karia and Another v. The Attorney General and Others*, [2005] 1 EA 83, 89. (Emphasis supplied)” (Emphasis mine)

96. The decisions cited above are important for explaining what constitutes a preliminary objection and the import of the legal doctrine of Res judicata.

97. Courts have on numerous occasions held that one cannot raise a ground of res judicata by way of preliminary objection and that the best way to raise a ground of res judicata is by way of Notice of Motion. This is because pleadings have to be annexed to enable the Court to determine whether the former and current suit and/or application involves the same parties and similar subject matter.

98. For purposes of determining this preliminary objection, I make an exception because the ruling that the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents are referring to and the application under consideration are on the Court record.

99. On 13<sup>th</sup> October, 2022 the Plaintiff/Applicant filed the application dated 11<sup>th</sup> October, 2022 where it sought the following prayers;

- a. That this application be certified as urgent and the same be heard ex parte in the first instance.
- b. That this Honorable Court be pleased to grant an interim injunction restraining the Defendants either by themselves, servants and/or employees, their agents and/or representatives from entering, remaining upon and/or trespassing on all that Property known as LR No. 9932/2, cutting trees, removing trees or any other thing, disposing, alienating, encumbering, charging, interfering, transferring or in any other way howsoever dealing with all that Property known as LR No. 9932/2 pending the interpartes hearing and determination of this application.
- c. That this Honorable Court be pleased to direct the Rift Valley Police Regional Commander/Coordinator to supervise the enforcement of the order sought in prayers (2) above.



- d. That this Honorable Court be pleased to grant an interim injunction restraining the Defendants either by themselves, servants and/or employees, their agents and/or representatives from entering, remaining upon and/or trespassing on all that Property known as LR No. 9932/2, cutting trees, removing trees or any other thing, disposing, alienating, encumbering, charging, interfering, transferring or in any other way howsoever dealing with all that Property known as LR No. 9932/2 pending the hearing and determination of this suit.
  - e. That this Honourable Court be pleased to direct the Rift Valley Police Regional Commander/ Coordinator to supervise the enforcement of the order sought in prayers (sic) (4) above.
  - f. That the costs of this application be provided for.
100. The 1<sup>st</sup> Defendant/Respondent filed a Replying Affidavit sworn by Isaac Kiprono on 24<sup>th</sup> October, 2022 where it contended that LR No. 9932/2 no longer existed and that it was the registered owner of LR No. 9932/7 which it was in occupation of.
  101. This Court heard the Plaintiff/Applicant's application for injunction and said application was dismissed on 15<sup>th</sup> June, 2023.
  102. The Plaintiff/Applicant being dissatisfied with the said ruling, filed an appeal to the Court of Appeal and also filed an application for an injunction.
  103. The Court of Appeal delivered its ruling in Nakuru Civil Appeal (Application) E052 of 2023 on 27<sup>th</sup> October, 2023 and granted an interlocutory injunction.
  104. It is not disputed that the said appeal is pending hearing and determination.
  105. Ground one of the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents preliminary objection has been set out in the preceding paragraphs but I will nonetheless replicate it as hereunder;
    - "a. That this Honourable Court delivered a lengthy ruling on 15th day of June, 2023 pronouncing itself on the pertinent issue of validity of the respective titles in this matter which ruling also effectively disposed of the suit altogether rendering this Honourable Court functus officio and the application res judicata as envisaged in Section 7 of the Civil Procedure Act Cap 21."
  106. It is not disputed that the ruling delivered on 15<sup>th</sup> June, 2023 is subject of an appeal. My view is that this Court cannot make a determination on whether or not the instant application is res judicata for reason that it (the application dated 11<sup>th</sup> October, 2022) is subject of an appeal pending before the Court of Appeal.
  107. Essentially, the thing i.e. the merits or otherwise of the application dated 11<sup>th</sup> October, 2022 which was dismissed by this Court and whether the ruling had the effect of disposing of the suit is pending before the Court of Appeal. Therefore, the "thing" has not been decided.
  108. A finding by this court, by way of example, that the application dated 11<sup>th</sup> October, 2022 is res judicata and the Court of Appeal subsequently confirming orders of injunction in favour of the Plaintiff/Applicant would lead to an absurdity.
  109. I find that it is too early in the day to state that this application is res judicata.



110. The other ground of objection is that this suit is sub judice. This is in Ground 2 of the 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents preliminary objection. It is in the following words;
- “b. That dissatisfied with the decision of this Honourable Court, the Plaintiff/Applicant proffered an appeal against the said ruling which appeal is still pending before the appellate Court hence the suit is sub judice before the Court of Appeal. In the intervening period this Honourable Court has no jurisdiction to entertain the instant application and must down its tools and freeze awaiting further orders of the appellate Court.”
111. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents contend that the present suit is sub judice as there is an appeal pending before the Court of Appeal.
112. The Plaintiff/Applicant did not address this issue in its submissions.
113. Section 6 of the *Civil Procedure Act* provides as follows;
- “No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.” (Emphasis mine)
114. The Supreme Court in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (Advisory Opinion Reference 1 of 2017) [2020] KESC 54 (KLR) (Constitutional and Human Rights) (7 February 2020) (Ruling)* held as follows;
- “67. The term ‘sub-judice’ is defined in Black’s Law Dictionary 9<sup>th</sup> Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of Courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before Courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before Courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.” (Emphasis mine)
115. In the ruling delivered on 15<sup>th</sup> June, 2023 the Court dismissed the application dated 11<sup>th</sup> October, 2022 which sought orders of injunction.
116. The said ruling is subject of an appeal. The 3<sup>rd</sup> to 16<sup>th</sup> Defendants/Respondents contend that since the said appeal is pending, then the present suit is sub judice.
117. It is important to note that this suit is pending hearing and determination and what is before the Court of Appeal is an appeal from a ruling on an interlocutory application.



118. Therefore, the present suit is not sub judice.

**B. Whether this court should grant the orders of temporary injunction in light of the ruling delivered by this court on 15<sup>th</sup> June, 2023 and further in light of the ruling of the Court of Appeal delivered on 27<sup>th</sup> October, 2023.**

119. In answering this question, the analysis under issue (a) might be reproduced. It will seem repetitive but is useful.

120. The law in respect of temporary Injunctions has been set out by all parties. In the judicial decision of *Giella v. Cassman Brown* [1973] EA 358, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the Court is in doubt it will decide an application on the balance of convenience.”

121. All parties appreciate this decision and have attempted to answer to whether the Plaintiff/Applicant meets the criteria for grant of orders of temporary injunction and I appreciate their input.

122. However, the question here is whether this Court can grant orders of temporary injunction in the instant application bearing in mind that it declined to do so vide its ruling delivered on 15<sup>th</sup> June, 2023 and also bearing in mind that the said ruling is subject of appeal.

123. I must mention that I appreciate that the parties in the instant application are different; the 3<sup>rd</sup>-16<sup>th</sup> Defendants not having participated in the former application giving rise to the ruling of 15<sup>th</sup> June, 2023.

124. It is not disputed that in the application dated 11<sup>th</sup> October, 2022, the Plaintiff/Applicant sought orders of injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents with regard to LR No. 9932/2.

125. In the application under consideration, the Plaintiff/Applicant is seeking orders of injunction against the Defendants/Respondents over LR No's 9932/2, LR 9932/7 or LR 9932/8-22 and any other subdivisions of LR 9932/7.

126. It is evident that the parcel of land subject of these proceedings was initially described as LR 9932/2. Vide a further amended Plaint dated 20<sup>th</sup> February, 2025, the Plaintiff Applicant has introduced the 3<sup>rd</sup>-16<sup>th</sup> Defendants and has also at paragraph 17B introduced would be sub-divisions of LR 9932/7 to give rise to LR 9932/8-22.

127. In the application under consideration, the Plaintiff/Applicant in the affidavit in support of the application states that the 1<sup>st</sup> Defendant/Respondent unlawfully accessed the suit parcel i.e. LR 9932/2 and cut down the Plaintiff/Applicant's trees while alleging that it was the owner of the land. He goes on to state that the 1<sup>st</sup> Defendant/Respondent made the said allegations while relying on the title documents of LR 9932/7.

128. It is apparent that both the Plaintiff/ Applicant and the 1<sup>st</sup> Defendant/Respondent claim the same parcel of land but have different title documents being LR 9932/2 and LR 9932/7. It is also apparent that the 3<sup>rd</sup>- 16<sup>th</sup> Defendant/Respondents hold title documents for LR 9932/8-22 which are sub-



divisions of LR 9932/7. The legality or otherwise of the ownership of the suit parcel and the title documents held by all parties herein shall be subject of interrogation during the hearing and determination of this suit.

129. My view is that this Court declined to grant orders of injunction in respect of the suit parcel, described by the Plaintiff as LR 9932/2 and described by the Defendant LR 9932/7 (as described by the 1<sup>st</sup> Defendant/Respondent) and which land has now mutated and is described by the 3<sup>rd</sup>-16<sup>th</sup> Defendants as LR 99328-22 (as described by the 3<sup>rd</sup>-16<sup>th</sup> Defendants/Respondents). The order of 15<sup>th</sup> June, 2023 is in respect of the same parcel of land, regardless of the description given to it by the parties herein. The said order remains on the Court record and is subject of appeal.
130. In any event, there is an order of the Court of Appeal through which injunctive orders in respect of LR 9932/2 were issued.
131. If at all LR 9932/2 and LR 9932/7 refer to one and the same parcel and if at all LR 9932/8-22 are alleged subdivisions of LR 9932/2, then it doesn't serve any purpose to seek another order of injunction when there is already subsisting orders of injunction issued by the Court of Appeal.
132. If the Plaintiff/Applicant is desirous of an order of the Court that explicitly mentions that orders of injunction are in respect of LR 9932/2, LR 9932/7 and LR 9932/8-22 he should approach the Court that issued the said orders of injunction to review them.
133. In view of the foregoing, I decline to consider another application (the instant application) seeking orders of temporary injunction in respect of the same parcel of land having declined to grant the orders in a former application.
134. Before penning off, this Court notes that the present suit was filed on 13<sup>th</sup> October, 2022. Since the matter was filed, a total of seven applications have been filed including the application under consideration. It has been three years since this suit was filed and it is therefore imperative that it be set down for hearing.
135. That being the case, no further applications shall be filed in this matter except with leave of Court.

### **C. Who should pay costs of this application.**

136. The general rule is that costs shall follow the event. This is in accordance with the Provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

### **Disposition.**

137. Taking the foregoing into consideration, I find as follows:
  - a. The Plaintiff/Applicant's application dated 13<sup>th</sup> January, 2025 lacks merit and it is hereby dismissed with costs.
  - b. The 3<sup>rd</sup> -16<sup>th</sup> Defendants/Respondents Preliminary Objection dated 17<sup>th</sup> January 2025 lacks merit and it hereby dismissed with costs.
  - c. No more applications shall be filed in this matter without leave of Court.
138. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025.**



**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Wakiaga for Odhiambo for the Plaintiff/ Applicant.

Mr. Mugambi for the 1<sup>st</sup> Defendant/ Respondent.

MR. Onesmus Langat for the 3<sup>rd</sup> - 16<sup>th</sup> Defendants/ Respondents.

Mr. Ojwang for 2<sup>nd</sup> Defendant

Court Assistant; Mr. Joseph Makori.

