



**Lowoi & 10 others v Kipyego & 3 others; County Land Adjudication & Settlement  
Officer, Trans Nzoia & 2 others (Interested Parties) (Environment and Land  
Case E044 of 2025) [2025] KEELC 7659 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7659 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E044 OF 2025  
CK NZILI, J  
NOVEMBER 5, 2025**

**BETWEEN**

**YUSUF ABDIRAHAMAN LOWOI ..... 1<sup>ST</sup> PLAINTIFF  
PETER KOSGEI CHEPTOO ..... 2<sup>ND</sup> PLAINTIFF  
ROSELYNE JELIMO CHEPKONGA ..... 3<sup>RD</sup> PLAINTIFF  
MERCY JEBETT KOMEN ..... 4<sup>TH</sup> PLAINTIFF  
TABITHA BIWOTT ..... 5<sup>TH</sup> PLAINTIFF  
ABRAHAM KIMUTAI SUTER ..... 6<sup>TH</sup> PLAINTIFF  
DENNIS NGETICH CHERUIYOT ..... 7<sup>TH</sup> PLAINTIFF  
ELIZABETH CHELANGA ..... 8<sup>TH</sup> PLAINTIFF  
NICHOLAS BIWOTT YANO ..... 9<sup>TH</sup> PLAINTIFF  
PHILIP KIPKOECH BARNO ..... 10<sup>TH</sup> PLAINTIFF  
PHILEMON MENGICH CHEBET ..... 11<sup>TH</sup> PLAINTIFF**

**AND**

**SUSANA JEMAIYO KIPYEGO ..... 1<sup>ST</sup> DEFENDANT  
CLEMENT KIPLAGAT KIPYEGO ..... 2<sup>ND</sup> DEFENDANT  
JOH KIMELI KIPGEYO ..... 3<sup>RD</sup> DEFENDANT  
THE COUNTY SURVEY, TRANS NZOIA ..... 4<sup>TH</sup> DEFENDANT**

**AND**



**COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER, TRANS  
NZOIA ..... INTERESTED PARTY**

**DIRECTOR OF LAND ADJUDICATION & SETTLEMENT .... INTERESTED  
PARTY**

**LAND REGISTRAR, TRANS NZOIA ..... INTERESTED PARTY**

## **RULING**

1. Through an application dated 15/9/2025, the applicants seek:
  - (1) ...spent
  - (2) ...spent
  - (3) ...spent
  - (4) ...spent
  - (5) ...spent
  - (6) Pending hearing and determination of this suit, a temporary injunction be issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> interested parties from discharging or repossessing land title No. Trans Nzoia/Suwerwa/93.
  - (7) Order that the survey that was done pursuant to a letter dated 9/10/2024 by the 4<sup>th</sup> defendant be declared illegal, irregular, null, void, and that the entire fences made as a result be removed, or uprooted pending hearing and determination of the suit.
  - (8) A temporary injunction shall issue, restraining the respondents and the interested parties from entering into any sale agreement, selling, surveying, subdividing, transferring, disposing of, pledging, leasing, charging, or interfering with land Title No. Trans Nzoia/Suwerwa/93, including the applicants' right to its occupation and peaceful enjoyment.
  - (9) In the alternative, an order of status quo in respect of Title No. Trans Nzoia/Suwerwa/93 pending hearing and determination.
  - (10) Pending hearing and determination, the court is to order the 1<sup>st</sup> and 2<sup>nd</sup> interested parties to go to the ground and issue a detailed ground report and official record status of Title No. Trans Nzoia/Suwerwa/93 and place it on the court record.
  - (11) OCS Geta Police Station to provide security to ensure compliance with the court orders.
  - (12) Costs of the application.
2. The application is supported by grounds on the face of it and in a joint supporting affidavit of Yusuf A. Lowoi, Peter Kosgei Cheptoo, Roselyne Jelimo Chepkonga, Tabitha Biwott, Abraham Kimutai Suter, Dennis Ngetich Cheruiyot, Elizabeth Chelanga, and Philip Kipkoech Barno, sworn on 15/9/2025.
3. The applicants depose that they are currently in possession and occupation of their individual plots of approximately 14.4 acres out of Trans Nzoia Plot No. 93 Suwerwa Settlement Scheme, since 2015, as per the area chief's letter dated 6/3/2024, confirming the same marked as TS-(1).



4. The applicants depose that the mother title was allocated to the late Kipyego Koskei Alias Kigen Kipyego Limo, as such forming part of his estate as per the death certificate attached as TS-(2).
5. The applicants depose that the succession cause over the estate was determined and summons confirmed as per a grant dated 5/12/2002, where the 1<sup>st</sup> respondent had been appointed as one of the administrators and beneficiaries of the estate, while the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were also beneficiaries of plot No. 93 as per the attached grant marked TS-(3).
6. Further, the applicants depose that they bought their portions through sale agreements made between them and the 1<sup>st</sup> respondent as one of the administrators and the beneficiary, as well as the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, while others bought from third parties who had bought directly from the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents. Copies of the sale agreements are attached as TS-4 - 18.
7. The applicants depose that upon execution of the sale agreements, the 1<sup>st</sup> - 3<sup>rd</sup> respondents caused a survey/subdivision whereof, the 1<sup>st</sup> - 11<sup>th</sup> respondents took possession of their individual portions of the land as per the purchased acreages on the ground with defined boundaries and access roads which were created as per annexed copy of a map of the subdivision marked TS-(19).
8. The applicants depose that despite purchasing the subject property for value and paying the full purchase price, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents have refused or declined to issue them with their duly registered ownership documents, as indicated in the respective sale agreements, despite follow-ups and reminders captured in the chief's letters dated 29/4/2020, sent to the 1<sup>st</sup> - 3<sup>rd</sup> respondents, over the delayed processing of the same attached as TS-(20).
9. The applicants depose that since taking possession and occupation, they have experienced peace and tranquility while awaiting completion documents until 9/10/2024, when the 1<sup>st</sup> - 3<sup>rd</sup> defendants in a well-calculated plan and without any colour, valour, notification, or consent moved in and re-subdivided the said land despite protest through the 4<sup>th</sup> respondent, as per a letter dated 9/10/2024 marked TS-(21).
10. The applicants depose that due to the aforesaid illegal subdivision, there was created illegal fences that have led the 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> respondents losing portions of their land, they went ahead to forcefully burn animal feeds, plough and plant on the acquired portions through an unknown third parties, who despite having no interest in the property were copied in the illegal survey letter.
11. Equally, the applicants have attached copies of the OB police report at Suwerwa Police Post on 24/12/2024 and at Geta Police Station on 12/1/2025 and 18/3/2025, with photos confirming the illegal acts marked as TS-(22), (23), and (24) respectively.
12. The applicants depose that they are apprehensive that the 1<sup>st</sup> - 3<sup>rd</sup> respondents maliciously and deliberately set them up through the 4<sup>th</sup> respondent so that they could alter ground positions, displace them and resale the suit property, injure or defeat their interest as now confirmed by the fact of forcefully taking away portions of the 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> respondents and giving them to unknown third parties out of the 4<sup>th</sup> respondent's illegal subdivision.
13. The applicants depose that in December 2024, they discovered that the subject plot was under the Settlement Fund Trustees' charge, which was in arrears of Kshs. 1,165,473.48, increasing at the rate of Kshs. 207.55 per day, hence risks repossession, yet the 1<sup>st</sup> - 3<sup>rd</sup> respondents had told them it was free of any form of encumbrances, going by letter from the 1<sup>st</sup> and 2<sup>nd</sup> interested parties dated 23/12/2024, attached as TS-(25).



14. Similarly, the applicants depose that they, alongside their families, presently reside and subsist on the suit property, and if it is disposed of or repossessed by the 1<sup>st</sup> and 2<sup>nd</sup> interested parties, they would be rendered homeless, landless, and destitute, and their investments therein since 2015, stand at a risk of dissipation or eviction, valued at close to Kshs. 27,412, 000/=, as of March 2025, going by a valuation report from Regent Valuers International Ltd, attached as TS-(26).
15. The application is opposed through a replying affidavit of Susan Jemaiyo Kipyego Kipyego, the 1<sup>st</sup> respondent, sworn on 9/10/2025, on her own behalf and the 3<sup>rd</sup> respondent, terming the suit as res judicata in view of Kitale CMC E159 of 2014, Yusuf Abdurahama Lowoi & Others -vs- John Kipyego & Others. The respondents deposed that the applicants are yet to pay costs for the former suit.
16. The 1<sup>st</sup> and 3<sup>rd</sup> respondents aver that they own the suit land upon obtaining the confirmation of the grant about the estate of the late Kigen Kipyeto Limo, the allottee of the land, whose families live or occupies over 30 acres of the suit land, hence the order of injunction will restrain them from accessing their homestead.
17. The 1<sup>st</sup> and 3<sup>rd</sup> respondents depose that the orders sought are untenable, for they are final in nature and can only be granted upon a full trial considering all the facts in issue.
18. The 1<sup>st</sup> and 3<sup>rd</sup> respondents term the application as lacking merits, frivolous, vexatious, an abuse of the court process and out to hinder the lawful administration of the deceased estate by the administrators, who as part of these powers, caused a surveyor to survey the whole property as per a letter dated 9/10/2024 annexed as SJK-(1), whose purpose was also to establish each person's boundary, following the applicants' previous suit stopping the survey process, withdrawn on 25/9/2025, as per annexure marked SJK-2(a) and (b).
19. Further, the 1<sup>st</sup> and 3<sup>rd</sup> respondent depose that the applicants are guilty of abrogating and reprobating, since in the application and the plaint, they claim 14.4 acres out of 44 acres, under their occupation, while they also seek re-allocation of 14.4 acres, otherwise to seek to stop future sale agreements or subdivision over the rest of 30 acres is not tenable.
20. The 1<sup>st</sup> and 3<sup>rd</sup> respondents depose that orders of injunction or status quo claimed are not possible, since earlier on the applicants had said that their acreages cannot be ascertained, and this can only be achieved after a full hearing and determination of the suit.
21. The 1<sup>st</sup> and 3<sup>rd</sup> respondents depose that the subject property is not at the verge of being repossessed by the 1<sup>st</sup> and 2<sup>nd</sup> interested parties as alleged, since they have engaged them and if there is an amount owing to them, a repayment plan has been agreed upon; hence, the order for injunction sought cannot be issued at this juncture. Attached are copies of a letter dated 17/9/2025 and sellers' payment receipts marked SJK-3(a) and (b).
22. The 1<sup>st</sup> and 3<sup>rd</sup> respondents term the application and the suit premature, raising no known cause of action, an attempt to interfere with the normal process of completing the succession cycle without just cause, and where there is no irreparable harm to be suffered, for the applicants retain effective remedies at the conclusion of the succession cause.
23. The court notes that there is a supplementary affidavit sworn on 22/10/2025. There was no leave sought to file such an affidavit. The same is not properly in court. It attaches an official search as annexure marked DNC-(1) confirming the land is owned by Settlement Fund Trustees as of 8/7/2025.



24. The applicants rely on written submissions dated 23/10/2025, terming the acts of the respondents as disregarding their vested rights to defeat their boundaries, interferes, alter, erect, and fence over the bought and occupied portion of the suit land since 2015.
25. The applicants submit that the respondents had concealed the existence of an active charge over the suit property in favour of Settlement Fund Trustees, hence were now exposing them to imminent repossession and loss, despite substantial investment in it.
26. The plaintiffs submit that due to the imminent danger, there is a need to preserve the status quo and the substratum of the suit in the interest of justice, fairness, and equity. Reliance is placed on *Giella -vs- Cassman Brown Co. Ltd* [197] EA 358, *Nguruman Ltd -vs- Jan Bonde Nielsen & Others* [2014] eKLR, and *American Cyanamid Co. Ltd -vs- Ethicon Ltd* [1975] AC 396.
27. The plaintiffs submit that the replying affidavit raises objections that are misconceived, misplaced, and devoid of merit.
28. On the former suit, the plaintiffs submit that the suit is not res judicate for the former suit was withdrawn before it was heard and determined on merit, this court is the proper and competent forum, the orders sought are not final and fall within Order 40 of the Civil Procedure Rules, that they are bona fide owners and occupiers of approximately 14.4 acres, the suit land form part of a settlement scheme, now in loan arrears and that the respondents objection are a dilatory tactic designed to delay court's intervention so that they can continue with the illegal interference, subdivision and the potential disposal of the suit property.
29. The plaintiffs urge the court to disregard the objection and allow the prayers sought to preserve the integrity of the suit and to prevent further prejudice to the applicants.
30. The 1<sup>st</sup> and 3<sup>rd</sup> respondents rely on written submissions dated 15/10/2025. It is submitted that the applicants have not met the threshold for the grant of temporary orders of injunction as per the holding in *Giella -vs- Cassman Brown* (supra), *Nguruman Ltd -vs- Jan Bonde Nielsen & Others* [2014] eKLR, *Mrao Ltd -vs- First American Bank of (K) Ltd & Others* [2003] eKLR, *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* [2018] eKLR, *Robert Mugo Wa Karanja -vs- Ecobank (K) Ltd & Another* [2019] eKLR and *Joseph Oduor Anode -vs- Kenya Red Cross Society* [2012] eKLR.
31. Order 40 Rules 1 and 2 of the Civil Procedure Rules as read together with Section 63(a) of the [Civil Procedure Act](#) grant this court powers to grant a temporary injunction, where it is proved through an affidavit or otherwise danger to the property in any dispute being wasted, damaged or alienated by any party to the suit, or where it is threatened with removal or disposal by the defendant, in circumstances affording reasonable probability to obstruct or delay any execution of the decree likely to be passed against the defendants
32. Order 40 Rule (2) of the Civil Procedure Rules provides cases to restrain the defendants from breaching a contract or other injuries of any kind complained of or any injury of a like kind arising out of the same contract or relating to the same property or right. See *Robert Mugo Wa Karanja -vs- Ecobank (K) Ltd* (supra).
33. Interim preservation or inspection of suit property in danger is governed by Order 40 Rule 10 of the Civil Procedure Rules. To be entitled to the relief sought, the plaintiffs have to meet the conditions set in *Giella -vs- Cassman Brown* (supra). In *American Cyanamid Co. -vs- Ethicon Ltd* (supra) and *Nguruman Ltd -vs- Jan Bonde Nielsen* (supra).



34. A prima facie case is established where, looking at the material before the court, a right has been infringed, violated, or is in danger of breach, to call the opposite party for a rebuttal. See *Mrao Ltd -vs- First American Bank of (K) Ltd* (supra).
35. In *Nguruman Ltd -vs- Jan Bonde Nielsen* (supra), the court held that in establishing whether or not the three huddles have been met, the court need not conduct a mini trial or make definitive findings of fact or law, but to set out the affidavits, whether the applicants raise an arguable case, issue, or cause for consideration at the hearing.
36. Irreparable damage, as held in *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* (supra), means one that cannot be adequately compensated by way of damages. It must be real, imminent, and apparent. Mere fear and apprehension are not enough. The consequences must be real and grave.
37. Balance of convenience, as held in *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* (supra), is the risk of not granting the orders and the suit ultimately succeeding in favour of the plaintiff, being more than where it is granted, and the suit ultimately dismissed.
38. The primary pleading by the plaintiffs is the plaint dated 15/9/2025.
39. The plaintiffs seek declaratory orders that they are bona fide owners of 14.4 acres out of 44 acres of plot No. Trans Nzoia 93 Suwerwa Settlement Scheme, that each of them bought as per sale agreements attached in the supporting affidavit, and which the 1<sup>st</sup> - 3<sup>rd</sup> defendants put them into vacant possession in 2015, have developed the same, but the 1<sup>st</sup> - 3<sup>rd</sup> defendants have declined to complete the transfer process.
40. The plaintiffs seek a permanent injunction, an order directing the 1<sup>st</sup> and 2<sup>nd</sup> interested parties to reallocate approximately 14.4 acres out of the plot, and for the 3<sup>rd</sup> interested party to register them as owners, and in the alternative, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants to compensate them at the current market price, the 1<sup>st</sup> - 3<sup>rd</sup> defendants to execute the transfer documents, and for general damages.
41. A cause of action refers to acts on the part of the defendant that give the plaintiff a cause of complaint. See *D.T. Dobie & Company (Kenya) Limited -vs- Joseph Mbaria Muchina & another* [1980] KECA 3 (KLR). The plaintiffs on paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the plaint have based their claim on being bona fide purchasers of 14.4 acres out of 44 acres, of plot No. 93 Suwerwa Settlement Scheme, allocated to the late Kipyego Koskei alias Kigen Kipyego Limo, said to form part of his estate, now under alleged to be under the management of the 1<sup>st</sup> - 3<sup>rd</sup> defendants by virtue of a confirmation of letters of grant.
42. It is not the business of courts to rewrite contracts. Parties have the freedom to contract. See *National Bank of Kenya Limited -vs- Pipe Plastic Samkolit (K) Ltd* (2002) 2 EA 503 (2011) eKLR.
43. The plaintiffs seek equitable remedies from this court arising out of sale agreements. A land sale agreement is governed by Section 3 of the [Law of Contract Act](#) and Section 38 of the [Land Act](#). The rights of vendors and purchasers in breach of sale agreements are governed by Sections 39, 40, 41, and 42 of the [Land Act](#).
44. Due diligence means the legal and factual investigation of a property before a sale agreement is consummated. It starts with causing an official search to establish the registered owner. The plaintiffs have submitted that there was a non-material disclosure by the defendants, on the status of the suit land, when they offered the portions for sale in 2015.
45. The plaintiffs plead that the suit property belongs to the estate of the late Kipyego Koskei alias Kigen Kipyego Limo, and that they acquired the same from bona fide holders of the letters of administration



- and or beneficiaries of the estate. They blame the defendants for breaching the terms and conditions of the sale agreements, and for now engaging the 4<sup>th</sup> defendant and the 1<sup>st</sup> and 2<sup>nd</sup> interested parties, who are now interfering with the existing sale agreements, possession, and occupation.
46. It is on those grounds that the plaintiffs seek equitable orders of temporary and mandatory injunction pending hearing and determination of the suit. Equity follows the law. A prima facie case is established if, on the material before the court, there is a breach or threat to or violation of a right by the opposite party.
  47. It is not in dispute that the late Kigen Kipyego Limo, the allottee of plot No. 93 Suwerwa Settlement Scheme, passed on on 16/4/2000. The certificate of confirmation of grant was issued on 9/12/2002. Plot No. 93 is not listed as forming part of his estate. The capacity of the sellers of portions of the 14.4 acres of the land to the plaintiffs in almost all the sale agreements before me is not defined.
  48. There is evidence that title No. Trans Nzoia/Suwerwa/93 still belongs to the Settlement Fund Trustees, with effect from 11/3/1990, hence the demand notices for loan arrears and the repayment plan as per annexure SJK-3(a) and (b).
  49. It is upon that realization that the plaintiffs have sued the 4<sup>th</sup> defendant, 1<sup>st</sup> - 3<sup>rd</sup> interested parties, and seek prayers No. (1), (3), (4), (5), and (6).
  50. In *Kahunga -vs- Wanyonyi & Others* ELC No. 4 of 2023 [2025] KEELC 4559 [KLR] (16<sup>th</sup> June 2025) (Judgment), this court cited *Torino Enterprises Ltd -vs- Attorney General*, Petition No. 5 (E006) of 2022 [2023] KESC 79 [KLR], *Joseph Ngok -vs- Justice Moiijo Ole Keiwua & 5 others* Nairobi Civil Appeal No 60 of 1997 and *Mbogo -vs- Settlement Fund Trustees* [2025] KECA 567 [KLR] (28<sup>th</sup> March 2025) (Judgment), on the proposition that an offer letter is a mere invitation to treat, creating no transferable interests to land, and that whoever desires the court to give any judgment as to a legal right or liability depended on the existence of certain facts that he asserts must prove the existence of those facts.
  51. The applicants urge the court to find a prima facie case established, as their rights or interests accruing from valid sale agreements have been violated by the defendants and the interested parties.
  52. In *John Kamunya & another -vs- John Nginyi Muchiri & 3 others* [2015] KECA 767 (KLR), the court said that before one could access the benefits of land under the arrangement in the repealed Agriculture Act, he had an obligation to offset the loan and until that was done, no contractual obligation could legally arise until an allottee had fulfilled its indebtedness to the Settlement Fund Trustees and caused the title to be transferred to him as owner before he could exercise his free will to dispose it, after acquiring a legally transferable interest in the suit land.
  53. The applicants want the court to place a premium on the sale agreements signed with the 1<sup>st</sup> – 3<sup>rd</sup> respondents over the alleged suit land belonging to their deceased father, which formed part of his estate.
  54. There is evidence that plot No. 93, Suwerwa Settlement Scheme, is owned by Settlement Fund Trustees to date. It had not been transferred to the deceased. The loan arrears are still pending.
  55. The respondents have not formally taken over the letter of offer. They have not fulfilled the terms and conditions of the offer letter to acquire legally transferable rights in favour of the applicants. See *Joseph K. Cherono -vs- Kiplagat Kimitei* [1995] KECA 137 [KLR] and *Wamunyu -vs- Njoroge* (Civil Appeal 69 of 2018). [2023] KECA 1441 (KLR) (24 November 2023) (Judgment).



56. Due diligence required the plaintiffs to confirm the status of the land before they bought it. The allocating authority is not sued in this matter. The plaintiffs allege breach of their contractual rights.
57. A court of law cannot be used to enforce an illegal contract. In *Settlement Fund Trustees -vs- Nurdin Ismail Nurani* Civil Appeal No. 17 of 1970, the court addressed the issue of novation. There is no evidence that the 1<sup>st</sup> – 3<sup>rd</sup> respondents have been accepted as new allottees by the Settlement Fund Trustees.
58. As to irreparable loss or damage, the events that the applicants want the court to stop arose in October 2024. The issue of loan arrears was in December 2024. The alleged illegal resurvey took place on 9/10/2024. There was a pending suit by the plaintiffs until 16/9/2025. So the alleged imminent loss or danger was known by the plaintiffs almost a year before they moved to this court. There was also a live matter from 9/10/2024 to 16/9/2025, yet the applicants did not seize the opportunity to move the court that was handling the matter. The valuation report has captured the loss that the applicants can be compensated for.
59. The balance of convenience tilts in not granting any orders at this juncture for reasons also in the following paragraphs.
60. Strictly speaking, there are no dealings or transactions between the parties from which an inference could be drawn that new agreements have substituted the old ones, to bring on board the real owners who are the defendants and who can be said to have breached or violated, prima facie, the plaintiffs' rights.
61. Equally, the 1<sup>st</sup> -3<sup>rd</sup> defendants lack the capacity to transact in the suit land before the letter of offer issued by the defunct Settlement Fund Trustees to their late father is perfected one way or the other.
62. I find no prima facie case established in the circumstances for the plaintiffs to be entitled to prayers No. 6, 7, 8, 10, 11, and 12 of the application dated 15/9/2025.
63. As to prayer No. 9, Black's Law Dictionary, 9<sup>th</sup> Edition, defines it as a situation as it exists. Odunga J, as he was then, in *Republic -vs- National Environment Tribunal Ex parte Palm Homes Ltd & Another* [2013] eKLR, said that when a court orders or a statute orders that the status quo be maintained, it is expected that the circumstances as at the time when the order is made must be maintained. It seeks, as held in the *Kenya Airport Pilots Association -vs- Co-operative Bank of (K) Ltd & Another* [2020] eKLR, to safeguard the subject matter before it is eroded or radically changed, to prejudice the status ante, rendering the suit nugatory.
64. In *Biatosha Distributors Ltd -vs- Kenya Breweries Limited & Others* Petition No. 15 of 2000, the court cautioned the use of the term status quo in courts unless accompanied by the descriptive particulars of the exact position that the court seeks to preserve, to avoid a situation where each party is left to its own perception as to what the court meant. Clarity in the status quo, as held in *Saraj K. Shah -vs- Naran Mani Patel & Others* [2015] eKLR, is key.
65. From the respective positions of the parties herein, there is evidence that the letter from the 4<sup>th</sup> respondent was issued on 9/10/2024, and a report was made. The applicants have not denied that they filed this suit on 16/9/2025 at 4:00 p.m., while there was a pending Kitale ELC No. 159 of 2014. Therefore, the applicants, if aggrieved by the alleged irregular and unauthorized resurvey by the 4<sup>th</sup> respondent, had all the opportunity in the former suit to seek the reversal of the alleged illegal intrusion or interference of the status quo before 9/10/2024. Between 9/10/2024 to 16/9/2025, there is no explanation why the applicants did not challenge the resurvey work.



66. Similarly, there is evidence that the applicants, as of December 2024, were privy to the demand notice by Settlement Fund Trustees. The delay in moving to court if the repossession by the 1<sup>st</sup> and 2<sup>nd</sup> interested parties was imminent until almost a year later to seek an order of status quo is not explained.
67. The upshot is that, in the interest of justice, I allow prayer number (9) that the status quo subsisting at the date hereof, at 10:40 a.m., is to be maintained until hearing and determination of the suit.
68. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 5<sup>TH</sup> DAY OF NOVEMBER 2025.**

In the presence of:

Court Assistant – Dennis

Plaintiffs present

Tanui for Teti for the plaintiffs/applicants present

Obego for the 1<sup>st</sup> and defendant/respondents present

2<sup>nd</sup> defendant absent

4<sup>th</sup> defendant absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

