

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC LC CASE NO. E047 OF 2025

VICTORIA MILANOI NTAUTI1ST
PLAINTIFF/APPLICANT

PURITY KARKA NTAUTI.....2ND PLAINTIFF/
APPLICANT

VERSUS

WANZALA DAN SAMUEL.....1ST
DEFENDANT/RESPONDENT

SEAHAWK GENERAL LOGISTICS
LIMITED.....2ND
DEFENDANT/RESPONDENT

DISTRICT LAND REGISTRAR KAJIADO.....3RD
DEFENDANT/RESPONDENT

RULING

1. This **Ruling** is in respect to the **Notice of Motion** application dated **11th April 2025** brought pursuant to **Sections 3, 3A and 63(c)&(e) of the Civil procedure Act; Order 36 Rule 1, Order 40 Rule 1, 2 & 8, Order 51 Rule 1 & 3 of the Civil Procedure Rules; Section 26 & 80 of the Land Registration Act** and all other enabling provisions of the law.

2. It seeks orders that :

i. Spent;

ii. Spent.

iii. Spent.

iv. This Honourable Court be pleased to issue an Order of injunction to restrain the Defendants, their servants, agents or any other persons acting on their own behalf or on behalf of the defendants from howsoever trespassing, entering, encroaching, remaining in, sub dividing, surveying, taking over, beaconing, dispossessing, alienating, reclaiming, fencing, removing any fence,

gate or padlocks, dumping, making any constructions, and or harassing the Plaintiffs or their father or interfering with their peaceful entitlement, commercial exploitation and possession of Title No. Kajiado/Kaputiei-North/125997 pending the hearing of this suit.

v. This Honourable Court be pleased to issue an Order of inhibition restraining any dealings of any nature whatsoever on 65 acres contained in L.R No. Kajiado/Kaputiei-North/125997 without the express approval and consent of the plaintiffs pending the hearing of this suit.

vi. The OCS - Isinya Police station does assist in enforcement of any orders issued herein.

vii. The costs of this application be borne by the Defendants.

3. The grounds are on the face of the application as set out in paragraphs a to j. It is supported by the sworn Affidavits

of **Victoria Milanoi Ntauti**, the 1st Plaintiff/Applicant. It is her case that they are the registered Attorneys of their father Ntuati Kisoso Masari through the Power of Attorney registered on 20th March 2025.

4. She avers that their father was the registered owner of parcel Kajiado/Kaputiei North/570 measuring approximately 137.4 hectares as confirmed by the surveyors. They claim that their father intended to subdivide the said parcel into three portions, for himself and his two wives but he did not have any funds to facilitate the exercise. As a result he orally engaged the services of the 1st Defendant/Respondent and it was agreed that their father would sell to him twenty (20) acres of land at Kshs. 3,500,000 per acre totalling to Kshs. 70,000,000. The 1st Defendant/ Respondent would use part of the purchase price to cater for the subdivision and transfer costs.

5. The land was to be subdivided into four portions with the two wives each getting 135 acres, their father 45 acres and 20 acres registered in the 1st Respondent's name.

However, the 1st Defendant/Respondent pretending to be a registered surveyor caused subdivision of the said parcel into three portions. Two portions Kajiado/Kaputiei North/12995 and 12996 measuring 135 acres each and the third portion Kajiado/Kaputiei North/12997 measuring 65 acres which he transferred to his company the 2nd Respondent. This was done without their father's consent and in misrepresentation, taking advantage of his old age and by fraudulently obtaining consent from the Land Control Board. It is her case that only Kshs. 4,323,560 was paid by the 1st Defendant/Respondent as consideration.

6. Upon this realisation, their father filed a complaint at the Director of Criminal Investigation Office Isinya. The 1st Defendant/Respondent had been trying to take over their father's land and it was necessary for the reliefs in the application to be granted to safeguard his rights.

7. The **1st and 2nd Defendants/Respondents** in their **Replying Affidavit** sworn by **Wanzala Dan Samuel**, the 1st Defendant/Respondent and Director of the 2nd Respondent contested the application. He stated that the

Power of Attorney was fatally defective as it was drawn contrary to **Order 9 Rule 2(a) of the Civil Procedure Rules**. That while it was drawn from Form LRA 6 (r.18) the contents appears to be like those of a General Power of Attorney and that it had not disclosed a particular property for which the authority had been given.

8. He further contested Ntauti's age indicating that from his identification card he was 81 years old and not 98 years as claimed by the Applicants. It is his case that the Applicants affidavit was inadmissible since it was based on hearsay and should therefore be struck out.
9. He further stated that he was introduced to Ntauti by his brother in law Moses Leyioope Lenkoko sometime in 2020. Ntauti was selling a portion of his parcel Kajiado/Kaputei - North/ 570. He confirmed that Mr. Ntauti wanted to carry out a resurvey of his parcel 570, subdivide, then sell a portion of it. They agreed orally that the 1st Defendant/Respondent would cater for the said costs. He stated that the resurvey, subdivision and transfer was done as per the agreement. That each of the two wives

were to get 135 acres each, 20 acres would be transferred to him for the services offered at Kshs. 3,500,000 per acre and 45 acres would be transferred to the 2nd Respondent in exchange of parcels Kajiado/Kaputiei North/56456-56588 and Kajiado/Kaputiei North/71663-71718 comprising of 189 quarter portions totalling to 45 acres. Since each acre was valued at Kshs. 500,000 amounting to Kshs. 22,500,000 the difference would be paid in cash. He had honoured the agreement. He outlined the costs of the survey being Kshs. 55,010,000; subdivision being Kshs. 10,525,000; legal costs for transfer as Kshs. 8,840,000; legal fees as Kshs. 5,000,000 and brokerage costs as Kshs. 6,000,000. He indicated that contrary to the Plaintiffs' claim, he had paid Mr. Ntauti a total of Kshs. 16,100,000 and was therefore in legal possession of Kajiado/Kaputei North/125997 as per the agreement.

10. He further stated that once the dispute arose and the report was filed at Isinya police station by Mr. Ntauti there were attempts to resolve the matter amicably, but this suit was filed prematurely without service of a demand

letter. The application should therefore be dismissed since it did not meet the required threshold.

11. The Plaintiffs in their Further Affidavit restated that their father was indeed 98 years and what was on the identification card was inaccurate. They also contested the costs indicated by the 1st Defendant/Respondent stating that they were exorbitant and not factual and also indicated that the said surveyor by the name Joseph Wanjohi was not a registered surveyor under the Survey Board of Kenya and had never had any dealings with their father. They also contested the exchange of the 45 acres with the land held by the 2nd Respondent stating that if it was a genuine transaction, then the 1st Respondent would produce necessary documents such as consent from Land Control Board and transfer forms and not just title deeds in their father's name. They also contested the claim that there were attempts to resolve the dispute out of court and urged Court to allow the application.

12. This application was canvassed by way of written submissions.

The Plaintiffs/Applicants submissions

13. They are dated **27/6/2025**.

Counsel submitted that the Defendants have failed to produce any written agreement between the plaintiff's father. Further that the 1st Defendant/Respondent's has not shown that he has a contract between him and the plaintiff's father. Reliance is placed on the cases of **Giella Vs. Cassman Brown & Co. Limited (1973) EA 358; Mrao Vs. First American Bank of Kenya Limited & 2 Others (2003) eKLR; Schon Noorani Vs. Damji Ramji Patel & 2 others.**

14. It is further submitted that the plaintiffs stand to suffer irreparable injury if these orders are not granted as the defendants may forcefully take over possession of the suit property. They have put forward the cases of **Tabitha Waitherero Kimani Vs. Joshua Nganga (2017) eKLR; Joseph Siro Mosioma Vs. HCFK & 3 others (2008) eKLR; Sharok Kher Mohammed Ali Vs. Southern Credit Bank Corporation Limited (2008) eKLR; Muiri Coffee Estate Limited Vs. KCB (2009) eKLR.**

15. It is also submitted that the balance of convenience tilts in favour of the plaintiffs and in preserving the suit property pending hearing and determination of the suit. They have put forward the case of **Dorcas Muthoni & 2 Others Vs. Michael Ileri Ngari (2016) eKLR** where it was held;

“An order of inhibition issued under Section 68 of the Land Registration Act is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed off. The court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial

Guided by the principle that the court should always take the course that carries the lower risk of

injustice FILMS ROVER INTERNATION 7 OTHERS VS. CANNON FILMS SALES LTD 1986 3 ALL E.R. 772 it is my view that the injustice that would be caused to the defendant/respondent if the plaintiff/applicants were granted the prayer of inhibition and later failed at the trial outweighs the injustice that would be caused to the plaintiff/applicants if the prayer for inhibition was dismissed and they succeed in proving their case. Balancing the two competing interests, the cause of justice will best be served if the order of inhibition is granted.”

They urge that the Application be allowed.

The 1st and 2nd Defendant's/Respondents

Submissions

16. On whether the plaintiffs have *locus standi* to institute the and prosecute the application, it was submitted that the Power of Attorney dated 20th March 2025 was defective for not complying with provisions of **Order 9 Rule 2(a) of the Civil Procedure Rules** since they did

not seek and obtain Court's leave to appear as the donees under the Power of Attorney. Reference was made to the cases of **Carolyn Mpenzwe Chipande vs Wanje Kazungu Baya [2014] KEHC 3154 (KLR)** and **Jack J. Khanjira & another vs Safaricom Ltd [2012] KEHC 5508 (KLR)** among others. It was also submitted that the said power of attorney resembled a general power of attorney and the applicants had failed to meet the procedural requirements for a valid power of attorney.

17. On whether the application met the threshold set in **Giella vs Cassman Brown Co. Ltd [1973] EA 358**, it was submitted that the plaintiffs had misled the court first with the age of their father and also basing their case on hearsay and should be struck out. It was also argued that there was acquiescence since the transaction was carried out in 2022 and therefore the defendant was protected under the doctrine of laches and they had not shown a prima facie case of how they would suffer loss or damage as held in **Mrao Ltd vs First American bank of Kenya Ltd & 2 others [2003] eKLR**. It was also submitted that

the suit parcel had a restriction registered against it on 7th January 2025 barring any dealings which was of the same consequence as the temporary injunction sought. Therefore, granting the relief sought would be duplicating remedies which would achieve the same administrative results and the plaintiffs had not shown any additional risk or how they would be prejudiced in absence of the injunction. Therefore, the balance of convenience tilted in favour of the 1st and 2nd respondents and the application should be dismissed with costs to the 1st and 2nd respondents.

Analysis and determination

18. I have considered the Notice of Motion, the Affidavits in support, the response thereto and the authorities. I find and statutes and find that the issue for determination are:

- i. Whether the Plaintiffs' application meets that threshold for grant of temporary injunction;***
- ii. Who should bear the costs of this application?***

19. The Plaintiffs/Applicants seek injunctive reliefs as well as an order of inhibition restraining the Defendants from dealing with the parcel of land known as **Kajiado/Kaputiei North/125997** pending the hearing and determination of this suit. The Plaintiffs claim that the subdivision and transfer of the suit property measuring 65 acres was fraudulently undertaken by the 1st defendant/respondent against what was agreed. The 1st and 2nd defendants/respondents contested this claim

20. The principles for grant of interlocutory injunctions were set out in the *locus classicus* case of **Giella v. Cassman Brown & Co. Ltd [1973] E.A** and bolstered by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)** where it was held:

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

(a) establish his case only at a prima facie level,

(b) demonstrate irreparable injury if a temporary injunction is not granted, and
(c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.”

21. The first inquiry, therefore, is **whether the Plaintiff/Applicant has established a prima facie case.** The jurisprudential standard for what constitutes a prima facie case was laid out in **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR** where the Court held that: **“...A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case’...”**

22. The Plaintiffs/Applicants contest their father’s sale of the entire 65 acres of land and allege fraud on the part of the defendants/respondents. They have also raised queries on the 1st defendant/respondent’s claim on issues such as the consideration paid, compliance with statutory requirements as well as exchange of any parcels of land. On this ground, the Court finds that the Plaintiffs have an arguable case.

23. The second requirement is **whether the Applicants have demonstrated that they would suffer irreparable harm** if the injunctive relief is denied. It is not in doubt that land is a unique and emotive asset. In the case at hand, the Plaintiff's/Applicant's claim that the 45 acres transferred to the defendants /respondents was a portion that ought to be their father's land. They also claimed that the consideration alleged to have been paid by the defendants was inadequate for that piece of land. On the face value and without delving into the details of the suit, the Court finds that the Plaintiffs/Applicants have demonstrated that they will suffer irreparable loss and damage if these orders are not granted.

24. Finally, the Court must consider in whose favour the **balance of convenience tilts.**

25. On this limb, the Court must determine which party stands to suffer greater hardship if the injunction is granted or denied, I am guided by the holding in **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] KEELC 2424 (KLR)** where it was stated;

“...Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants...”

26. The Plaintiffs/Applicants seek to preserve the status quo ante and prevent registration of further dealings. The Defendants/Respondents shall pursue their case to trial and, if they succeed, recover any sums legitimately due. On the other hand, refusal to grant the orders creates a real risk of alienation and multiplicity of transactions which could render the Plaintiffs/Applicants' judgment if any nugatory. For that reason the balance of convenience favours the grant of the orders sought. I find that the Plaintiffs/Applicants stand to suffer greater inconvenience compared to the Defendants/Respondents if the orders not granted.

27. The Plaintiffs/Applicants also sought an Order of Inhibition against any dealings on the suit property. Inhibition orders are a recognized and appropriate

preservatory remedy under **Section 68(1) of the Land Registration Act** allowing the Court to inhibit registration of any dealings as follows:

“(1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”

28. Following the serious allegations, the Court deems it fit to grant the inhibition order as sought.

29. I find that the Plaintiffs/Applicants have established a case for the grant of the orders sought as follows:

- i. That a temporary Order of Injunction is hereby issued restraining the 1st and 2nd Defendants, their agents, servants, or any person acting under their authority, from entering, remaining on, trespassing, selling, leasing, charging, or in any other manner whatsoever dealing with all that parcel of land known as Kajiado/Kaputiei North/125997 pending hearing and determination of the suit.**

- ii. That an Order of Inhibition is hereby issued directed to the Land Registrar, Kajiado Central, restraining any registration of any instrument affecting the parcel of land known as Kajiado/Kaputiei North/125997 pending the hearing and final determination of this suit.
- iii. That costs of this application shall abide outcome of the main suit.

Dated, Signed and Delivered virtually at Kajiado this 13th day of November 2025.

L. KOMINGOI
JUDGE.

IN THE PRESENCE OF:

Mr. Kirimi for the Plaintiff/Applicant.

Mr. Oguye for Mr. Kimani for the 1st, 2nd,
Defendants/Respondents

N/A for the 3rd Defendant/Respondent.

Court Assistant - Peter.