

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. E139 OF 2024

JOHANA

WANJAU

WAWERU

.....**PLAINTIFF/APPLICANT**

VERSUS

ABANTU

GROUP

LIMITED.....1ST

DEFENDANT/RESPONDENT

JANE

KAKUVI

MWAKA.....2ND

DEFENDANT/RESPONDENT

TITUS

SAITOTI

LESHAN.....3RD

DEFENDANT/RESPONDENT

PETER

KAMAU

MUNENE.....4TH

DEFENDANT/RESPONDENT

LUZIKI

HOLDINGS

LIMITED.....5TH

DEFENDANT/RESPONDENT

**MWAI OLE TINGISHA SAMORI, PAUL SANE SAMORI, AND
ISAAC SAVINGO MWAAI.....6TH**

DEFENDANT/RESPONDENTS

**THE LAND REGISTRAR - KAJIADO WEST LANDS
REGISTRY.....7TH**

DEFENDANT/RESPONDENT

**THE DISTRICT LAND SURVEYOR-
KAJIADO.....8TH**

DEFENDANT/RESPONDENT

RULING

1. This **Ruling** is in respect of the **Notice of Motion** dated **5th December 2024** brought under; ***(Order 40 rules 1,2,3,4 and 9 of ;the Order 51 Rule 1 of the Civil Procedure Rules and section 3A and 63 (e) of the Civil Procedure Act CAP 21 Laws of Kenya).***

2. It seeks orders that;

1) Spent.

2) Spent.

3) Spent.

4) THAT pending the hearing and determination of this suit, this Honourable Court be pleased to issue an Order of Permanent Injunction to restrain the Defendants, their servants, workmen, licences, agents or any other persons acting on their own behalf or on behalf of the defendants from howsoever trespassing, entering, encroaching, remaining in, selling, subdividing, further sub dividing, taking over, dispossessing, alienating, reclaiming, fencing, cultivating, charging or further charging and or harassing the plaintiff or interfering with his peaceful entitlement and possession of the original parcel of land being TITLE NO. KAJIADO/KIPETO/286.

5) THAT pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order of inhibition restraining any dealings of any nature whatsoever on original parcel of land TITLE NO. KAJIADO/KIPETO/286 or

such illegal sub-divisions of Title Numbers Kajiado/Kipeto/22013, 22014, 22015, 22016 and 22017 without the express approval and consent of the plaintiff.

6) THAT pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order of eviction and removal of any structures within the original Title Number Kajiado/Kipeto/286 erected without permission of the plaintiff.

7) THAT the Kajiado County Commander and officers under his command to ensure compliance with any orders issued herein.

8) Costs of the application plus interest.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 8.

4. The Application is supported by the affidavit of Johana Wanjau Waweru, the Plaintiff/Applicant herein, sworn on the 5th December 2024 and a Supplementary Affidavit dated 5th June 2025.

5. The Application is opposed. There is a Replying Affidavit sworn by the 1st Defendant/Respondent's director William Kagwi Kimiri on the 10th February 2025.
6. It appears the 2nd - 5th Defendants/Respondents did not file any response to the Notice of Motion.
7. There is a Replying Affidavit, sworn by Isaac Sangingo Mwaai, Administrator of the estate of Mwaai Ole Tingisha Samori on the 23rd January 2025.
8. It appears the 7th and 8th Defendants/Respondents did not file any response.
9. The Notice of Motion was canvassed by way of written submissions.
10. The Plaintiff/Applicant's submissions are dated 5th June 2025. Counsel submitted that the Plaintiff is the registered and absolute owner of Kajiado/Kipeto/286 which he purchased from one, Ndibaru Waweru Mutheki on the 10th March 2015.
11. It is further submitted that the suit property was illegally sub-divided and transferred to third parties including the 6th defendant.

12. Counsel further submitted that the Plaintiff/Applicant's right to protection of property continues to be infringed through the encroachment by the Defendant/Respondents hence he has established a prima facie case with a probability of success at the trial.
13. It is further submitted that the Defendants/Respondents may deal with the land that is currently valued at Kshs.250 million in a manner likely to cause the Plaintiff/Applicant irreparable loss and damage. He has put forward the case of **Paul Gitonga Wanjau Vs. Gathuti Tea Factory Company Limited & 2 Others (2016) eKLR.**
14. Counsel also submitted that the balance of convenience tilts in favour of the Plaintiff/Applicant who has demonstrated ownership by providing all the necessary documents leading to his registration as the legal owner of Kajiado/Kipeto/286. He prays that the Application be allowed.
15. The 1st Defendant/Respondents submissions are dated 10th July 2025. Counsel submitted that the Plaintiff/Applicant has failed to establish that he is the owner of Kajiado/Kipeto/286 and that the same belongs to 1st

Defendant/Respondent who rightly subdivided it and transferred to the 2nd to 5th Defendants/Respondents.

He has put forward the cases of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358; Mrao Vs. First American Bank of Kenya Limited & 2 Others (2003) eKLR; American Cyanamid Co. Vs. Ethicom Limited (1975)UKHLI 1; Kipkoech Lagat t/a Kaptarakwa Enterprises & 23 Others Vs. William Bayas & 3 Others (2013) eKLR.**

16. It is further submitted that the balance of convenience tilts in favour of the 1st Defendant/Respondent who was the proprietor of the suit property. He has put forward the case of **Pius Kipchirchir Kogo Vs. Frank Kimeli Tenai.**
17. It is also submitted that the Plaintiff/Applicant has not complied with the legal requirements for eviction order to be issued. He prays that the Application be dismissed with costs.
18. It appears the 2nd to 5th Defendants/Respondents did not file any submissions, despite being granted 14 days on the 16th September 2025.

19. The 6th Defendant/Respondents submissions are dated 19th July 2025. It is submitted that the Plaintiff/Applicant has not fulfilled the conditions for grant of temporary injunction. Reliance is placed on the cases of **Nguruman Limited Vs. Jan Bonde Nielsen & 2 Others (2014) eKLR; Hubert L. Martin Vs. Margaret J. Kamar & 5 Others.**
20. It is further submitted that the Plaintiff/Applicant has failed to demonstrate how he acquired the land known as Kajiado/Kipete/286. They pray that the Application be dismissed with costs.
21. I have considered the Notice of Motion, the affidavit in support, the responses thereto, the written submissions and the authorities cited. The issues for determination are;
- i. **Whether the Plaintiff/Applicant's Application meets the threshold for grant of temporary injunction.**
 - ii. **Who should bear costs of this Application?**
22. The conditions for granting a temporary injunction were set out in the precedent setting case of **Giella Vs. Cassman Brown & Company Limited (1973) EA 358.**

23. They were restated by the Court of Appeal in the case of **Nguruman Limited Vs. 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) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”

24. The Plaintiff/Applicant has demonstrated that he is the lawful owner of Kajiado/Kipeto/286 which he purchased from one Ndibaru Waweru Mutheki on 10th March 2005. He was issued with a Title deed on 17th November 2015. I find that he has established a prima facie case with a probability of success at the trial.

25. It is not clear how the 1st Defendant/Respondent acquired the suit property which it sub-divided and transferred to the 2nd to 5th Defendants/Respondents.

26. I am also satisfied that the Defendants/Respondents may deal the suit property in a manner that is prejudicial to the Plaintiff/Applicant if these orders are granted. It should be noted that the 1st Defendant illegally sub-divided and transferred the suit property to the 2nd to 5th Defendants. This may result in irreparable harm that cannot be compensated by an award of damages.

27. The balance of convenience tilts in favour of the Plaintiff/Applicant who has demonstrated that he acquired the suit property lawfully from one Ndibaru Waweru Mutheki.

28. In conclusion I find merit in the Application and I grant the orders sought namely;

a) THAT a temporary injunction is hereby issued restraining the Defendants, their servants, workmen ,licenses, agents or any other persons acting on their own behalf or on behalf of the defendants from howsoever trespassing, entering, encroaching, remaining in, selling, subdividing, further sub dividing, taking over, dispossessing, alienating, reclaiming, fencing, cultivating, charging, or further charging and or harassing the plaintiff or interfering with his peaceful entitlement and possession of the original parcel of land being TITLE NO. KAJIADO/KIPETO/286 pending hearing and determination of the suit.

b) THAT an order of inhibition is hereby issued restraining any dealings of any nature whatsoever on original parcel of land TITLE NO. KAJIADO/KIPETO/286 or such illegal sub divisions

of Title Numbers Kajiado/Kipeto/22013, 22014, 22015, 22016 and 22017 without the express approval and consent of the plaintiff. Pending hearing and determination of the suit.

c) THAT the costs of this application do abide the 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. Waiswa for the Plaintiff.

Mr. Ochieng for the 1st Defendant.

N/A for the 2nd to 5th Defendants.

Mr. Ntajiri for the 6th Defendants.

Court Assistant – Peter.