

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ELC (OS) SUIT NO. E006 OF 2025

**IN THE MATTER OF ALL THAT PARCEL OF LAND KNOWN AS
LAND REFERENCE NUMBER WEST BUKUSU/EAST SIBOTI/ 28
SITUATED BUNGOMA COUNTY.**

AND

**IN THE MATTER OF SECTIONS 7,9,13 AND 38 OF THE
LIMITATION OF ACTIONS ACT, CHAPTER 22 OF THE LAWS
OF KENYA AND ORDER 37 RULE 7 OF THE CIVIL
PROCEDURE RULES**

BETWEEN

JOSEPH NANDEBE NYONGESA (Suing as the Administrator ad litem
of the Estate of Peter Nandebe Nalungu (Deceased).....1st
APPLICANT

ALEX WANJALA WASIKE (Suing as the Administrator ad litem of
the Estate of Wasike Opicho Wamachaba (Deceased).....
.....2nd APPLICANT

FEDINAND WAFULA WALIANDA (Suing as the Administrator ad
litem of the Estate of Walianda Nabiswa (Deceased).....
.....3rd APPLICANT

VERSUS

FESTUS NYONGESA BARASA (Sued as the Administrator of the
Estate of BARASA OPICHO (Deceased).....
RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion dated 09/05/2025 in which the Applicants seek for a temporary injunction restraining the Respondent from entering upon, surveying, subdividing, developing, transferring, alienating,

wasting, apportioning, or otherwise interfering with the Applicant's peaceful occupation and enjoyment of parcels of land measuring 2.25 acres, 2.125 acres and 7 2.5 acres, respectively, within all that parcel of land known as Land Reference Number West Bukusu/East Siboti/ 28 Situated Bungoma County, the placement of a restriction on the title, an order directing the Land Registrar, Bungoma County, to comply within seven days; enforcement of the interim orders under the supervision of the OCS Miyanga Police Station, costs and any further relief the Court may deem just and appropriate.

2. The application is premised on the grounds on the face of the said application supported by the affidavit of the 1st Applicant sworn on 09/05/2025. It is Applicants' contestation that the Respondent herein is in advance stages of disposing off and/or otherwise interfering with the suit property known as WEST BUKUSU/EAST SIBOTI/28 by way of sale to third parties as there is an ongoing construction on the suit land. That if the actions complained of are not stopped, they stand to suffer irreversible damage and loss and be rendered homeless as a direct consequence.

3. In opposition thereto, the Respondent filed a replying affidavit sworn on 30/08/2025 wherein he stated that he is the administrator of the estate of Barasa Opicho-Dcd, having been so appointed vide Bungoma Succ Cause 390 OF 2019 wherein the said estate was distributed accordingly. That the 3rd and 1st

Applicants got 0.8ha and 0.4ha respectively while other beneficiaries got their respective shares and titles. That as a result of the confirmation of the grant, he got West Bukusu/East Siboti/1515 which borders the 1st & 3rd Applicants land and thus, West Bukusu/East Siboti/28 ceased to exist as new numbers were created as a result of the partition. That there is no evidence of the assertion that the Applicants are in occupation of 2.25acres, 2.125acres and 2.5acres as claimed. He sought to have the application dismissed.

4. The application was agreed to be canvassed by way of written submissions.

5. The Applicant filed submissions dated 09/05/2025 where he submitted that have established the threshold of granting the injunctive orders sought and further that the issuance of the injunction ought to be submitted to the Land Registrar in line with Sec 76(2) of the Land Registration Act and its compliance supervised by the OCS Miyanga Police Station. They quoted inter alia the cases of **George Kamau Ngugi v County Land Registrar, Kiambu & Another [2017] eKLR, Republic v Land Registrar, Kilifi & Another Ex Parte Daniel Ricci [2017] eKLR, Republic v Commissioner of Police & Another Ex Parte Michael Monari & Another [2012] eKLR.**

6. The Respondent filed submissions dated 27/08/2025 wherein he submitted that the land which is the subject of the suit herein

was partitioned and ceased to exist- and that the 1st Applicant got West Bukusu/East 5. Siboti/2516, the 3rd applicant got West Bukusu/East Siboti/2514 and the Respondent herein got West Bukusu/East Siboti/2515. They submitted that with the distribution of the estate and the respective beneficiaries getting their title, the estate was wound up and the Respondent ceased to be an administrator and thus, cannot be sued in his capacity as administrator. Lastly, it was submitted that the Applicants had not made a case for issuance of the injunctive orders sought and urged the court to dismiss the application.

7. The principles for grant of an injunction were well set out in the case of **Giella -Vs- Cassman Brown & Co. Limited (1973) EA 358.** First an Applicant has to show that he has a prima facie case with probability of success. Second, an injunction will not be issued if the injury which the Applicant will suffer will adequately be compensated in damages. Third, if the Court is in doubt it will decide the application on a balance of convenience. Grant of a temporary injunction is predicated on **Order 40 Rule (1) (a) and (b) of the Civil Procedure Rules.**

8. I have looked at the material presented before this court by the parties herein. The Applicants are claiming that they are entitled to portions of Land Reference Number West Bukusu/East Siboti/28 measuring 2.25 acres, 2.125 acres and 7 2.5 acres, respectively. They argue that the Respondent has begun

construction and that they shall be rendered destitute if the orders sought are not issued. They have attached photos showing a plantation, hay, shed and a small hole which this court cannot ascertain its purpose.

9. The Respondent on the other hand submitted that Land Reference Number West Bukusu/East Siboti/28 which was an asset in the estate of Barasa Opicho was distributed and shared amongst the beneficiaries of the estate with the 1st and 3rd Applicant receiving shares thereof and their respective titles. It is further argued that the said land ceased to exist, a fact within the knowledge of the Applicants.

10. This Court has considered the materials placed before it and confirms that the ownership and distribution of Land Reference Number West Bukusu/East Siboti/28 were conclusively addressed in Bungoma Succession Cause No. 320 of 2019, culminating in the transmission of new and distinct titles to the respective beneficiaries. The 1st Applicant received LR No. West Bukusu/East Siboti/2514, the 3rd Applicant obtained LR No. West Bukusu/East Siboti/2516, and the Respondent was likewise vested with LR No. West Bukusu/East Siboti/2516. In the face of this lawful and final subdivision, the specific land parcels now complained of by the Applicants are, in fact, non-existent in law, having ceased to exist upon subdivision and issuance of new titles.

11. Consequently, the Applicants have failed to demonstrate the existence of a prima facie right over the Respondent's property capable of protection by a court of equity. It therefore goes without saying that the Applicants have not shown any threat of irreparable harm as their claim for ownership of the various portions is questionable. Further, if their claim were to succeed, the land occupied by the Applicant is capable of being valued and in case they succeed, they will always be compensated in damages. Even if the Court were to entertain any doubts, the balance of convenience tilts in favour of the Respondent.

12. On the prayer for restriction, this court finds that the Applicants have not proven the likelihood of improper dealings or fraud being perpetrated by the Respondent. I therefore find that the Applicants' application is devoid of merit. The same is hereby dismissed with costs to the Respondent.

13. It is so ordered.

DATED, SIGNED and DELIVERED at **BUNGOMA** this 27th day of November, 2025.

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HON.E.C CHERONO
ELC JUDGE

In the presence of;

1. Mr. Omeri for the 1st, 2nd and 3rd Applicants.
2. Mr. Anwar for the Respondent.

3. Bett C/A.