



Ibacho Farmers Self Help Group (Suing through its Official Elkanah Moruri) v Barina Squartters Self Help Group Land Project (Sued through its Chairman Patrick Maguru) (Environment and Land Case E006 of 2025) [2025] KEELC 5643 (KLR) (30 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5643 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E006 OF 2025
MAO ODENY, J
JULY 30, 2025**

BETWEEN

**IBACHO FARMERS SELF HELP GROUP PLAINTIFF
SUING THROUGH ITS OFFICIAL ELKANAH MORURI**

AND

**BARINA SQUARTTERS SELF HELP GROUP LAND PROJECT DEFENDANT
SUED THROUGH ITS CHAIRMAN PATRICK MAGURU**

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion application dated 27th January, 2025 which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. That a temporary injunction be issued restraining the Respondents whether by themselves or their servants and or agents from in any way howsoever alienating the suit properties that is to say L.R No 11384, 5700 and 10332 or developing the same or in any way of dealing with it or trespassing thereon to the detriment of the Applicant pending hearing and determination of the instant suit.
 - d. Spent
 - e. That the costs of this Application be provided for.
2. The application is supported by the annexed affidavit of Elkanah Moruri sworn on 27th January, 2025 where he deponed that he is the Applicant’s chairman. That the Applicant’s members purchased



portions of land in LR No. 11384, 5700 and 10332 in the year 2000 consisting of 400 acres which form part of the list of members of the Respondent.

3. The Applicant's chairman deponed that vide a decree of the subordinate court, the Applicant together with the Respondent were declared the legitimate owners of the subject parcels of land paving way for subdivision to allocate members their respective portions of land. It was his case that from November 2024, the Respondent has discriminately left them out in the subdivision process.
4. He further deponed that the Respondent officials are altering the list of members with the sole intention of disowning the Applicant's members. He also averred that the Respondent's officials have started selling un-subdivided portions of land including where members of the Applicants reside which will lead to their evictions. He urged the court to allow the Application as prayed.
5. Patrick Maguru filed a Replying Affidavit sworn on 20th March 2025 and deponed that he is an official of the Respondent and the application lacks merit. He deponed that on 18th February, 2025 he instructed his advocates to write to the Applicant's officials who forwarded the groups register and minutes indicating that Elkanah Moruri was neither a member nor an official. He further deponed that the applicant has no locus to bring the instant application as he has not produced any legally binding document to show the alleged purchase of 400 acres from the Respondent. The Respondent's official further deponed that the Applicants have not met the threshold for granting the interlocutory orders sought.
6. Elkanah Moruri filed a Further Affidavit sworn on 4th June, 2025, and deponed that the documents attached to the Respondent's Replying Affidavit are forgeries. It was his deposition that if at all there is a dispute on the officials of the Applicant, the same can be litigated elsewhere and the matter before this Honorable Court is on ownership of 400 acres of land.

Applicant's Submissions

7. Counsel for the Applicant filed submissions dated 5th June, 2025 and identified the issues for determination as:
 - a. Whether the Applicant's members are the beneficial owners of 400 acres of the suit properties?
 - b. Whether the Respondent actions of changing the register amounts to an illegality?
8. Counsel submitted that the Applicant has established a prima facie case as its members constitute part of the Respondent who own approximately 400 acres. Counsel submitted that the only dispute is with the officials of the Applicant. It was counsel's submission that copies of titles have been placed before the court showing existence of the properties.
9. Mr. Gatoto also submitted that an affidavit sworn by the Respondent has acknowledged that the Applicant members own 400 acres out of the suit property. And relied on the case of *Giella v Cassman Brown* (1973) EA 358.
10. Counsel submitted that the Applicant's members stand to suffer irreparable harm which may not be compensated by way of damages as they will be deprived of their share. Counsel therefore urged the court to allow the application as prayed as the balance of convenience tilts in favour of the Applicant.

Respondent's Submissions

11. Counsel for the Respondent filed submissions dated 11th June, 2025, and identified the following issues for determination:



- a. Whether the Applicant has established a prima facie case?
 - b. Whether the Applicant has satisfied the threshold for an injunction?
12. On the first issue, counsel submitted that the Applicant has failed to demonstrate any legal right that has been infringed by the Respondent and the Applicant's claims are unsupported by any material evidence that would require rebuttal. Counsel submitted that from the Applicants annexures EM5, the registered owner is Barina Squatters Self Help Group Registered Trustees, a legal entity capable of suing and being sued and which is not a party to this suit.
 13. Counsel relied on the cases of *Mrao Limited v First American Bank of Kenya Limited* (2003) and *Kenleb Cons Ltd v New Gatitu Service Station Ltd & another* (1990) eKLR.
 14. On the second issue, counsel submitted that the Applicant will not suffer any irreparable harm as alleged. Counsel submitted that the inconvenience the Barina Squatters Self Help Group Registered Trustees is likely to suffer if the orders are granted is greater compared to that of the Applicant.
 15. Counsel urged the court to dismiss the application and relied on the cases of *Giella v Cassman Brown* (1973) EA 358, *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) and *Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & another* [2019] eKLR.

Analysis And Determination

16. The issue for determination is whether the court should grant the Plaintiff/Applicant a temporary injunction. In the case of *Rockland Kenya Limited v Elliot White Miller* [1994] eKLR, the court held as follows:

“The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in the action if the matters in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the Plaintiff's undertaking in damages if the subject-matter of the trial was decided in his favour. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. Such matters are to be dealt with at the trial. Nonetheless, the Court must in the exercise of its discretionary power in this regard be satisfied that the claim in respect of which an interlocutory injunction is sought is neither frivolous nor vexatious: in other words, that there is a serious question to be tried.”

17. Order 40 Rule 1 of the *Civil Procedure Rules 2010* provides as follows:

Where in any suit it is proved by affidavit or otherwise—

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or



- b. that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
18. The Applicant has informed the court that the Respondent's officials have started selling un-subdivided portions of land including where members of the Applicants reside which will lead to their evictions. The Applicant further submitted that its members stand to suffer irreparable damage if the order is not granted as they risk losing their shares.
19. The Respondents acknowledge that the Applicants are members who are in the list of beneficiaries to the suit land, which is awaiting subdivision as the court had already decreed that they are the legitimate owners of the land.
20. I do not foresee any prejudice that will be occasioned to the Respondent if an order of a temporary injunction is issued if they are not interfering with the suit land. Such an order is to preserve the suit land pending the determination of this suit and the parties should try alternative dispute resolution as the issue can be solved amicably
21. I find that this is a case where an order of a temporary injunction is justifiable and merited to enable the parties to settle the issue of subdivision and titling of the individual parcels. The Applicant has established a prima facie case with a probability of success and therefore make the following specific orders:
 - a. A temporary injunction is hereby issued restraining the Respondents whether by themselves or their servants and or agents from in any way howsoever alienating the suit properties that is to say L.R No 11384, 5700 and 10332 or developing the same or in any way of dealing with it or trespassing thereon to the detriment of the Applicant pending hearing and determination of the instant suit.
 - b. Parties to try engaging in alternative dispute resolution if they are amenable to it.
 - c. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF JULY 2025.

M. A. ODENY

JUDGE

