



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chepkwony v Sigilai & another (Environment and Land Case  
E030 of 2025) [2025] KEELC 8579 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8579 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND CASE E030 OF 2025  
LA OMOLLO, J  
DECEMBER 4, 2025**

**BETWEEN**

**SAMMY KIPKOSGEY CHEPKWONY ..... PLAINTIFF**

**AND**

**JOSEPH BETT SIGILAI ..... 1<sup>ST</sup> DEFENDANT**

**EVANS ONYINKWA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Introduction.**

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 27<sup>th</sup> May, 2025. The application is expressed to be brought under Sections 3A & 63(c) of the *Civil Procedure Act*, Order 40 Rule 1 & 3(4) and Order 51 Rule 1 of the Civil procedure Rules.
2. The application seeks the following orders;
  - a. Spent
  - b. Spent
  - c. That this Honourable Court do issue a temporary injunction restraining the Defendant (sic), his (sic) servants, agents and/or any other person acting under his authority from trespassing/encroaching on, cultivating, remaining and/or otherwise interfering with the Plaintiff/Applicant's enjoyment, use and occupation of that parcel of land known as LR No. 631/1667 (Grant No. I.R. 690/69); pending the hearing and determination of this suit.
  - d. That the costs of this application be provided for.
3. The application is based on the grounds on its face and the supporting affidavit of Sammy Kipkosgey Chepkwony sworn on 27<sup>th</sup> May, 2025.



## **Factual Background.**

4. The Plaintiff/Applicant commenced the present proceedings vide the Plaint dated 27<sup>th</sup> May, 2025 which Plaint was amended on 5<sup>th</sup> June, 2025. He seeks the following orders:
  - a. A declaration that the Plaintiff is the bonafide registered owner of all that property known by reference as (sic) LR No. 631/1667 (Grant No. I.R 69067).
  - b. A permanent injunction restraining the Defendants, their agents, servants and/or any other person acting under their direction(s) from entering/trespassing/encroaching, cultivating and/or otherwise interfering with the Plaintiff's quiet possession, use and occupation of the property known as L.R No. 631/1667 (Grant No. I.R 69067).
  - c. General damages for trespass and/or illegal encroachment on the Plaintiff's property known as LR No. 631/1667 (Grant No. I.R 69067).
  - d. Costs of this suit.
  - e. Interest on (iii) and (iv), above.
  - f. Any other relief as this Honourable Court may deem fit or just to grant.
5. As at the time of writing of this ruling, the Defendants/Respondents have not filed their Statements of Defence.
6. The application under consideration first came up for hearing on 28<sup>th</sup> May, 2025 when the Court issued a temporary injunction restraining the 1<sup>st</sup> Defendant/Respondent from interfering with the suit property pending hearing and determination of the application.
7. As at the time of the issuance of the said Order, the 2<sup>nd</sup> Defendant/Respondent was yet to be joined to the suit.
8. The Court also issued directions that the application be served upon the 1<sup>st</sup> Defendant/Respondent.
9. The 2<sup>nd</sup> Defendant/Respondent was joined to the suit on 5<sup>th</sup> June, 2025 vide an amendment to the Plaint.
10. On 22<sup>nd</sup> July, 2025 the Court issued directions that the application be heard by way of written submissions.
11. It was mentioned on 8<sup>th</sup> October, 2025 to confirm filing of submissions and on 9<sup>th</sup> October, 2025 it was reserved for ruling.

## **The Plaintiff/Applicant's Contention.**

12. The Plaintiff/Applicant contends that he is the registered owner of LR No. 631/1667 (Grant No. 690/69).
13. The Plaintiff/Applicant also contends that he has developed the said parcel of land and built a house where his workers reside.
14. The Plaintiff/Applicant further contends that he has been in exclusive possession of the said parcel of land for a period of over twenty-five years.
15. It is his contention that Richard Tuwei Langat and Joshua Kipngetch, his workers, informed him that on 23<sup>rd</sup> May, 2025 the Defendant/Respondent (sic) trespassed onto the suit property in the company



- of several other persons. He goes on to state that the Defendant/Respondent (sic) directed his workers to vacate the suit parcel.
16. It is also his contention that the Defendant/Respondent (sic) threatened his workers with dire consequences if they do not vacate the suit parcel.
  17. It is further his contention that the Defendant/Respondent (sic) is a stranger to him and that he has not been able to reach out and find out the nature of his claim because he does not have his telephone number.
  18. He contends that he (sic) is currently living in Nairobi.
  19. He also contends that he is apprehensive that unless the Defendant/Respondent (sic) is restrained by the Court, he (Defendant/Respondent(sic)) will take advantage of his absence and deprive him of the use and enjoyment of the suit property.
  20. He further contends that he stands to suffer irreparably if the orders sought are not granted as the Defendant/Respondent (sic) is threatening to unlawfully curtail his right to quiet use and possession of the suit parcel.
  21. It is his contention that he has been advised by his advocates on record that since he is the registered owner of the suit parcel, he has a prima facie case with high chances of success.
  22. He ends his deposition by stating that he has filed the application under consideration in good faith.
  23. The Defendants/Respondents did not file any response to the Plaintiff/Applicant's application.

**Issues for Determination.**

24. The Plaintiff/Applicant filed his submissions on 16<sup>th</sup> September, 2025 while the Defendants/Respondents did not file any submissions.
25. The Plaintiff/Applicant submits on whether he has met the threshold for the grant of an order of injunction.
26. The Plaintiff/Applicant relies on the judicial decisions of *Giella vs Cassman Brown & Co. Ltd (1973) EA, Mrao Ltd v First American Bank of Kenya Ltd [2003] eKLR* and submits that he is the registered owner of the suit parcel of land.
27. The Plaintiff/Applicant also submits that he has been in occupation of the suit parcel for over twenty-five years.
28. The Plaintiff/Applicant further submits that on 23<sup>rd</sup> May, 2025 and 4<sup>th</sup> June, 2025, the Defendants/Respondents entered the suit parcel and threatened his workers.
29. It is his submissions that his workers were ordered by the Defendants/Respondents to vacate the suit parcel failure to which they will face dire consequences.
30. It is also his submissions that he is apprehensive that the Defendants/Respondents will make good their threats and interfere with his possession of the suit parcel.
31. It is therefore his submissions that he has established a prima facie case.
32. The Plaintiff/Applicant relies on the judicial decision of *Pius Kipchirchir Kogo versus Frank Kimeli Tenai [2018] eKLR* and submits that there is imminent risk that he will be unlawfully deprived of the suit parcel of land.



33. The Plaintiff/Applicant also submits that monetary compensation in the event of unlawful deprivation would be inadequate as he does not merely hold the suit parcel as an asset, but it is also his home and his source of livelihood.
34. The Plaintiff/Applicant submits that the balance of convenience tilts in his favour since he is the registered owner of the suit parcel and has been in uninterrupted possession.
35. The Plaintiff/Applicant also submits that unless the orders sought are granted, he stands to be forcefully ejected from the suit parcel of land which will occasion him grave prejudice.
36. The Plaintiff/Applicant further submits that the issuance of an injunction in the circumstances, will secure the ends of justice by preventing further trespass and intimidation. The injunction sought will preserve peace while at the same time protecting his proprietary interest pending determination of the suit.
37. The Plaintiff/Applicant concludes his submissions by urging the Court to allow his Amended Notice of Motion application dated 5<sup>th</sup> June, 2025.
38. It is important to note that the application that is subject of this ruling is dated 27<sup>th</sup> May, 2025.
39. Upon perusal of the Court record, it is evident that there is an Amended Notice of Motion application dated 5<sup>th</sup> June, 2025 that was filed on 15<sup>th</sup> July, 2025. No directions were issued in respect to the said application.

#### **Analysis and Determination.**

40. I have considered the Plaintiff/Applicant's application and submissions. My view is that the only issue that arises for determination is whether the Plaintiff/Applicant has met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.
41. In the judicial decision of *Giella v. Cassman Brown* [1973] EA 358, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the Court is in doubt it will decide an application on the balance of convenience.” (Emphasis mine)
42. The Plaintiff/Applicant must first establish a prima facie case. A prima facie case was defined in the judicial decision of *Mrao Limited v. First American Bank of Kenya & 2 Others* [2003] eKLR as follows;

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.” (Emphasis mine)
43. The Plaintiff/Applicant contends that he is the registered owner of LR No. 631/1667 (Grant No. I.R. 69069).



44. The Plaintiff/Applicant submits that the Defendants/Respondents have on various dates entered onto the suit parcel of land and threatened his workers with dire consequences if they do not vacate the said parcel of land.
45. The Plaintiff/Applicant has attached to his affidavit in support of the application a copy of the Certificate of Title for LR No. 631/1667 (I.R No. 69069) which shows that Sammy Kipkosgey Chepkwony (the Plaintiff/Applicant) is the registered owner. The lease is for a term of 99 years from 1<sup>st</sup> May, 1995.
46. I find that the Plaintiff/Applicant has met the first criteria for grant of an interlocutory injunction; he has demonstrated that he has prima facie case.
47. The second condition for grant of orders of temporary injunction is that the Plaintiff/Applicant must demonstrate that he will suffer irreparable injury that would not be adequately compensated by way of damages.
48. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself as follows:
- “On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.” (Emphasis mine)
49. The judicial decision in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR provides an explanation of what is meant by irreparable injury. It is as follows;
- “Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.” (Emphasis mine)
50. The Plaintiff/Applicant submits that he stands to suffer irreparable loss if the orders sought are not granted as the suit parcel of land is not only his home but also his source of livelihood. Taking this into consideration, I find that the Plaintiff/Applicant has demonstrated that he will suffer irreparable damage which cannot be adequately compensated by way of damages if an order of temporary injunction is not granted.
51. If after making considerations on the existence of a prima facie case and irreparable injury the Court is still in doubt, then an application for temporary injunction is to be determined on the basis of balance of convenience.



52. The Plaintiff/Applicant has demonstrated that he has a prima facie case and that he is likely to suffer irreparable injury. I will nonetheless consider whether the balance of convenience tilts in his favour.

53. In *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (supra) the Court held as follows;

“The meaning of balance of convenience will favour of the Plaintiff’ is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. 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 will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it” (Emphasis mine)

54. In *Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 others* [2016] eKLR the Court while considering the question of balance of convenience expressed itself thus;

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the Court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance of convenience lies.” (Emphasis mine)

55. In the present application, it is my view that the balance of convenience tilts in favour of the Plaintiff/Applicant. The Plaintiff/Applicant is likely to suffer greater inconvenience compared to the inconvenience likely to be occasioned to the Defendants/Respondents if orders of temporary injunction are not granted. This is premised on the fact that the Plaintiff/Applicant is in occupation and use of the suit parcel of land.

### **Disposition.**

56. Taking the foregoing into consideration, the application dated 27<sup>th</sup> May, 2025 is allowed in the following terms;

- a. A temporary injunction is hereby issued restraining the Defendant/Respondent, his agents, servants or anyone claiming through him from trespassing, encroaching, cultivating or in any way interfering with the Plaintiff/Applicant’s possession of LR No. 631/1667 (Grant No. I.R 69069) pending the hearing and determination of this suit.
- b. Costs of the application shall abide the outcome of the suit.

57. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 4<sup>TH</sup> DAY OF DECEMBER, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Koech for the Plaintiff/Applicant.

No appearance for the Defendant/Respondent.

Court Assistant; Mr. Joseph Makori.

