

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**

**ELC LAND CASE No. E061 OF 2025**

**DR. JOEL KIBOWEN ARAP TOROITICH** .....  
**PLAINTIFF/APPLICANT**

**VERSUS**

**GEORGE OTIENO ODERA** ..... **1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**UASIN GISHU COUNTY,**  
**LAND REGISTRAR** ..... **2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**THE CHIEF LAND REGISTRAR** ..... **3<sup>RD</sup>**  
**DEFENDANT/RESPONDENT**

**RULING:**

1. This Ruling is in respect of the Plaintiff/Applicant's Notice of Motion Application dated 27<sup>th</sup> June, 2025 in which he seeks the following orders:-
  - (1) Spent
  - (2) Spent
  - (3) Spent
  - (4) THAT pending the hearing and determination of the suit, this Honourable Court be pleased to issue an interlocutory injunction restraining the 1<sup>st</sup> Respondent by himself/agents/employees/assigns/representatives and servants or any other person from dealing in, alienating, advertising for sale, selling, taking possession, leasing, transferring, encroaching

and or otherwise disposing of that parcel of land known as Title Number: Pioneer/Langas Block 1/151 within Eldoret Town.

(5) THAT pending the hearing and determination of the suit, this Honourable Court be pleased to issue an interlocutory injunction/inhibition restraining the 2<sup>nd</sup> Respondent from registering a transfer, charge or any instrument of disposition of interest in that parcel of land known as Title Number: Pioneer/Langas Block 1/151 within Eldoret Town.

(6) THAT pending hearing and determination of the suit, order of inhibition be granted under Section 68(1) of the Land Registration Act prohibiting the Defendants and any other person from dealing in the property until this matter is determined by this Court.

(7) THAT pending hearing and determination of the suit, an order be granted directing the 2<sup>nd</sup> Defendant to register the inhibition pursuant to Section 68(2) of the Land Registration Act, against all that parcel of land known as Title Number: Pioneer/Langas Block 1/151 within Eldoret Town.

(8) THAT costs of this Application be provided for.

2. The Application is supported by the grounds set forth on the face of the Motion and on the Plaintiff's Supporting Affidavit of even date, where he deposed that he is the legal and beneficial owner of the property known as Pioneer/Langas Block 1/51 (the suit property herein). He explained that he purchased the same from Priscilla Malel (deceased) vide agreement made on 21<sup>st</sup> January, 1988 and has been in occupation thereof to date and still pays rates thereon. He avers that when he went to pay

rates on the land in the year 2024, he was informed that the rates account for the property was missing.

3. The Plaintiff states that he procured a search dated 9<sup>th</sup> December, 2024 as well as a certified copy of the green card dated 18<sup>th</sup> December, 2024. That both documents revealed that the land was registered to George Otieno Odera, the 1<sup>st</sup> Defendant/Respondent on 14<sup>th</sup> February, 2013 upon transfer by Esther Chebet Malel as administrator of the estate of Priscilla Jepkering Malel. He averred that he does not know the 1<sup>st</sup> Defendant or how he became registered as the proprietor of the land. He averred that only a beneficiary or personal representative of the estate of a deceased can transfer land upon confirmation of the grant.
4. The Plaintiff asserted the transfer implies that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are acting in cahoots to defeat his rightful claim on the land. He further asserted that the transfer was illegal as the suit property was not available for distribution since it had been sold by the late Priscilla Malel. He pleaded that he moved the 2<sup>nd</sup> Defendant to place a restriction against any dealings on the suit property pursuant to Section 76 of the Land Registration Act. That to this end, he met with a Land Registrar in person on 26<sup>th</sup> February, 2025 but the said officer verbally refused to register the restriction and the same has not been done to date leaving him exposed.
5. The Plaintiff expressed that he suspects the 1<sup>st</sup> Defendant is in the process of transferring the title to a third party to outwit

him and defeat his claim while working in cahoots with the 2<sup>nd</sup> Defendant hence the refusal to register the restriction. He urged that in the circumstances, it is only proper that the application herein be allowed with costs.

6. The Application was duly served on the Defendants pursuant to which the Hon. Attorney General entered appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. However, neither the 1<sup>st</sup> nor the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed any response to the Application.

**Submissions:**

**Plaintiff/Applicant's Submissions;**

7. The court directed the Plaintiff to canvass the Application by way of written submissions. Pursuant to the said directions, the Plaintiff filed written submissions dated 19<sup>th</sup> November, 2025. In the said submissions, Counsel for the Plaintiff submitted that the only issue for determination is whether the court should grant the orders sought. On the principles that guide the granting of injunctions, Counsel referred this court to the case of **Giella vs Cassman Brown (1973) EA 358** and reiterated in **Nguruman Limited vs Jan Bonde Nielsen & 2 Others C.A No. 77 of 2012 (2014) eKLR.**
8. To this end, Counsel submitted that the Plaintiff has a prima facie case for reason that he holds a valid certificate of lease over the land, which is itself prima facie proof of ownership thereof. That the property is at risk of being alienated despite him being the legal owner thereof. He reiterated that the land was not free property available to the estate of the late Priscilla Malel or any other party. Counsel relied on **Mrao Limited vs**

**First American Bank of Kenya Ltd & 2 Others (2003) KLR 125** and **Peter Kasimba & 219 Others vs Kwetu Savings & Credit Co-Operative Society Limited & 11 Others (2020) eKLR.**

9. Counsel cited the case of **Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR** and further submitted that the Plaintiff stands to suffer irreparable harm not adequately compensated by an award of damages. Counsel asserted that the refusal by the County Land Registrar to register the caution left the Plaintiff's land exposed to individuals intending to dispossess him of the same. Counsel argued that if the land is transferred to third parties, the Plaintiff would not be in a possession to recover it, thus damages would not adequately compensate him. Counsel also contended that the land is also of sentimental value to the Plaintiff, which no monetary compensation can cater for. Counsel further cited the case of **Said vs Issack & 3 Others (Environment and Land case Civil Suit 101 of 2022) (2023) KEELC 19219 (KLR)** in support of this argument.
10. With regards to the balance of convenience, Counsel submitted that there is a lower risk in granting the orders of temporary injunction than not granting them. Counsel added that this will afford the parties herein an opportunity to be heard in exercise of their fundamental right to a fair hearing. Counsel relied on **Paul Gitonga Wanjau vs Gathuthis Tea Factory Company Ltd & 2 Others (2016) eKLR**, **Amir Suleiman vs Amboseli Resort Limited (2004) eKLR** and **Robert Mugo wa Karanja**

**vs Ecobank (Kenya) Limited & Another (2019) eKLR.**

Counsel submitted that the Plaintiff had satisfied the threshold for grant of the orders sought and asked that the application be allowed as prayed.

**Analysis and Determination:**

11. I have considered the Notice of Motion, the affidavit in support and the annexures thereto as well as 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. Whether the court should direct that inhibitions should be registered against the title to the suit property;*
  - iii. Who should bear costs of this Application?*

**(a) Whether the Plaintiff/Applicant's Application meets the threshold for grant of temporary injunction;**

12. 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**. These conditions are that the party seeking an injunction must:-

- (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 by showing that the balance of convenience is in his favour.*

13. These conditions were indeed reiterated by the Court of Appeal in **Nguruman Limited vs Jan Bonde Nielsen & 2 Others**

**(2014) KECA 606 (KLR)**, where the Court further held that the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.

14. The first condition that the Plaintiff is required to surmount is that he has a prima facie case with a probability of success. A prima facie case was described by the Court of Appeal in **Mrao Ltd. vs First American Bank of Kenya Ltd & 2 others (2003) KLR 125** as:-

***“In civil cases, a prima facie case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”***

15. The Plaintiff/Applicant has demonstrated that he is the lawful owner of the suit property, which he purchased from one Priscilla Malel vide an Agreement for Sale dated 21<sup>st</sup> January, 1988. He was thereafter issued with a Certificate of Lease dated 4<sup>th</sup> March, 1999. Both the Agreement for Sale and Certificate of Lease aforesaid were annexed to the Supporting Affidavit to the Application and are proof that the Plaintiff has a valid interest in the suit property.

16. The Plaintiff claims that he has since realised that the land was transferred to the 1<sup>st</sup> Defendant on 14<sup>th</sup> February, 2013 by one Esther Chebet Malel as administrator of the estate of Priscilla Jepkering Malel, the same person who sold the land to him. The Plaintiff has presented before this court a certificate of Official Search dated 9<sup>th</sup> December, 2024 and a certified copy of the green card showing that the land is indeed currently registered in the name of the 1<sup>st</sup> Defendant.
17. Since none of the Defendants filed a response to the Application, it is not clear how the 1<sup>st</sup> Defendant acquired the suit property. It is evident that the suit property had already been transferred to the Plaintiff before the demise of the late Priscilla Jepkering Malel. Logic dictates that since the land had already been registered in the Plaintiff's name in 1999, it ought not have been available for disposition by her estate in the year 2013 by way of either sell or even transmission in the succession proceedings.
18. In the circumstances, and in the absence of any evidence on how the land was acquired by the 1<sup>st</sup> Defendant, I find that at this interlocutory stage, the Plaintiff has established a prima facie case with a probability of success at the trial.
19. Secondly, a party seeking an interlocutory injunction must also demonstrate that they stand to suffer irreparable harm that cannot be compensated by way of damages. The Plaintiff has pleaded that there is a risk that the suit land may be sold to a third party, and if that happens, he will be unable to recover it. The Plaintiff claims that the 1<sup>st</sup> Defendant is acting in cahoots with the 2<sup>nd</sup> Defendant, and explained that he went to the lands

Office to lodge a caution but was verbally informed that the same could not be done.

20. The Plaintiff claims that at the moment, the suit land stands exposed to third parties who may wish to dispossess him of the property. The Plaintiff annexed a copy of the Application for registration of a Restriction that remains unregistered and a receipt for payment of the registration fee for the restriction. It is therefore possible that the suit property may be dealt with in a manner that is prejudicial to the Plaintiff if these orders are not granted. I am equally satisfied therefore that the Plaintiff has demonstrated that he stands to suffer of irreparably.
21. In any event, it is not in every case that damages will adequately compensate for the injury suffered by a party. Indeed, the Plaintiff claims that the suit property holds sentimental value which cannot be compensated by way of damages. In **Joseph Siro Mosioma vs Housing Finance Company of Kenya Limited & 3 Others (2008) eKLR**, the Court reinforced the protection of specific rights over mere financial compensation by way of damages, by stating that:-

***“On my part let me restate that damages is not automatic remedy when deciding whether to grant an injunction or not. Damages is not and cannot be a substitute for the loss, which is occasioned by a clear breach of the law. In any case the financial strength of a party is not always a factor to refuse an injunction. More so a party cannot be condemned to take damages in lieu of his crystallized right which can be protected by an order of injunction...”***

22. In this case therefore, the balance of convenience tilts in favour of the Plaintiff/Applicant who has demonstrated that he acquired the suit property lawfully from Priscilla Malel.

**(b) Whether the court should direct that inhibitions should be registered against the title to the suit property;**

23. The Plaintiff also sought several orders of inhibition restricting dealings on the land pending the hearing and determination of the suit. The question for determination under this issue therefore is whether the orders of inhibition sought are merited.

24. The legal provision on inhibition is section 68 of the Land Registration Act of 2012, which at Subsection (1), (2) and (3) provides as follows:

**68. Power of the court to inhibit registered dealings**

**(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.**

**(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.**

**(3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.**

25. Thus under Section 68, the court has power to grant orders of inhibition against a suit land restricting registration of any dealings thereon for a particular time, or until the occurrence of a particular event, or generally until further orders are made relating to the land. This is the essence of Section 69 of the said Land Registration Act, which explains the effect of an inhibition in the following words:-

**69. Effect of inhibition**

***So long as an inhibition remains registered, any instrument that is inconsistent with the inhibition shall not be registered.***

26. Therefore, the purpose of an order for inhibition is to preserve the suit property to prevent alienation of the property pending determination of a particular action. In this case, it would serve to enable the parties ventilate their case. The conditions to be considered before grant of an order of inhibition were stated in the case of **Rosemary Wanjiku Njigi vs Nancy Munjiru Ngige (2013) eKLR**, where L.N. Gacheru J cited with approval the decision in **Japhet Kaimenyi M'ndatho vs M'ndatho M'mbwiria (2012) eKLR** where it was stated as follows:-

- a) *That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.*
- b) *That the refusal to grant orders of inhibition would render the applicant's suit nugatory.*
- c) *That the applicant has arguable case.*

27. As to the impending risk of disposal of the property if the order is not issued, in this matter, the Plaintiff's case as already

explained is that he was the registered owner of the suit land. However, the land was transferred to the 1<sup>st</sup> Defendant without his knowledge. The Plaintiff claims that he attempted to lodge a caution to protect his interest over the suit property as he is by law allowed. However, his efforts were frustrated by the 2<sup>nd</sup> Defendants, who he claims, have refused to register the said caution.

28. Due to the alleged refusal to register the caution, the Plaintiff now claims that the suit property is exposed to possible disposition and/or alienation to third parties. The Plaintiff has accused the 1<sup>st</sup> Defendant of colluding with the 2<sup>nd</sup> Defendant to defraud him of the land.
29. Secondly, a party seeking an inhibition must show that the suit will be rendered nugatory if the orders of inhibition is not granted. The Plaintiff has confirmed that he has been in possession of the suit property since the year 1988 when he purchased it. However, possession alone does not adequately protect the subject matter of litigation. As is clear from the facts pleaded herein, the land was already transferred to the 1<sup>st</sup> Defendant without the Plaintiff's knowledge, and there is every possibility that the same might be done again before this matter is heard and determined on merit. It bears no argument that if the inhibition is not issued and the suit land is alienated or disposed of to third parties, the suit herein will be rendered nugatory.
30. The last condition is that the applicant must demonstrate that he has an arguable case. In this regard, this court has already determined that the Plaintiff has demonstrated that he has a

prima facie case with a possibility of success. The same applies under this head and I see no need to reproduce that discussion here. It is evident therefore, that the Plaintiff has met all the conditions for the grant of the orders of inhibition sought.

31. Moreover, there can be no dispute that the suit property ought to be preserved pending the hearing and determination of this suit on its merits. The Plaintiff having established good grounds why the orders of inhibition should be issued, and this Court having taken into account all relevant factors and the circumstances of this case, I find that it is only just that the said orders of inhibition be issued pending the hearing and determination hereof.

**(c) Who should bear costs of this Application?**

32. Section 27 of the Civil Procedure Act grants the Court the discretion to award costs. Under the proviso thereto, costs usually follow the event, unless special circumstances present themselves why such costs should not be awarded.

33. In the instant Application, the Plaintiff/Applicant has succeeded. However, this is a fresh matter which is yet to be heard. Notably also, the application was unopposed, and even the who AG entered appearance in the suit did not file a response to the Application. For those reasons, I will order that the costs of the application be costs in the cause.

**Orders:-**

34. Consequently, the Plaintiff's Application dated 27<sup>th</sup> June, 2025 succeeds and the same is allowed in the following terms: -

- (a) THAT an interlocutory injunction do and is hereby issued restraining the 1<sup>st</sup> Respondent by himself/ agents/ employees/ assigns/ representatives and servants or any other person from dealing in, alienating, advertising for sale, selling, taking possession, leasing, transferring, encroaching and or otherwise disposing of that parcel of land known as Title Number Pioneer/Langas Block 1/151 within Eldoret Town pending the hearing and determination of this suit.
- (b) THAT an order of interlocutory injunction and/or inhibition do and is hereby issued restraining the 2<sup>nd</sup> Respondent from registering a transfer, charge or any instrument of disposition of interest in that parcel of land known as Title Number Pioneer/Langas Block 1/151 within Eldoret Town pending the hearing and determination of the suit.
- (c) THAT order of inhibition do and is hereby granted under Section 68(1) of the Land registration Act prohibiting the Defendants and any other person from dealing in the property pending hearing and determination of the suit.
- (d) THAT an order do and is hereby granted directing the 2<sup>nd</sup> Defendant to register the inhibition pursuant to Section 68(2) of the Land Registration Act, against all that parcel of land known as Title Number Pioneer/Langas Block 1/151 within Eldoret Town pending hearing and determination of the suit.
- (e) THAT costs of this Application shall be in the cause.

35. Orders accordingly.

**DATED, SIGNED and DELIVERED** virtually at **ELDORET** on this **11<sup>TH</sup>** day of **DECEMBER, 2025** vide Microsoft Teams.

**HON. C. K. YANO  
ELC, JUDGE**

In the virtual presence of;

Mr. Mahinda for Plaintiff.

No appearance for Defendants.

Court Assistant - Edwin.

ORIGINAL