



Tomno v County Government of Elgeyo Marakwet & 2 others (Environment and Land Appeal E009 of 2025) [2025] KEELC 18488 (KLR) (9 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18488 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND APPEAL E009 OF 2025
L WAITHAKA, J
DECEMBER 9, 2025**

BETWEEN

CHARLES RONO TOMNO APPELLANT

AND

COUNTY GOVERNMENT OF ELGEYO MARAKWET 1ST RESPONDENT

THE NATIONAL LAND COMMISSION 2ND RESPONDENT

**THE DIRECTOR, LAND ADMINISTRATION, MINISTRY OF LANDS AND
PHYSICAL PLANNING 3RD RESPONDENT**

*(Being an appeal from the ruling of Gladys Adhiambo SPM
in Iten MCELC No 26 of 2020 delivered on 4th August, 2025)*

RULING

Introduction

1. By a ruling delivered on 4th August, 2025 in Iten MCELC 26 of 2020, the trial court dismissed the appellant's application for temporary injunction pending the hearing and determination of the suit. In dismissing the application, the learned trial magistrate inter alia stated/held: -

“The plaintiff has not demonstrated that over 20 years her father has ever developed the suit property and has not demonstrated that should the orders sought by her are not granted he will suffer loss that cannot be compensated by way of damages.....the plaintiff/applicant has not demonstrated that the defendant/respondents are incapable of compensating her by way of damages should this court eventually enter judgment in favour of the plaintiff/applicant as against the defendants/ respondents.



On the other hand, the Defendants/Respondents have demonstrated that the project that has stalled due to the temporary orders of injunction issued against the defendants/respondents restraining them from further construction, intermeddling, occupying, using or in any other way interfering with land Ref Iten Township Plot 214 pending hearing and determination of the instant application is a project meant to benefit the public...”

2. Dissatisfied with the decision of the lower court, the appellant appealed to this court on among other grounds, the ground that the learned trial magistrate completely misapprehended the principles that govern grant of an order of temporary injunction thereby arriving at an erroneous decision.
3. On 15th September, 2025 the appellant filed the notice of motion application dated 12th September, 2025 in which he seeks an order of temporary injunction restraining the 1st respondent by itself, its servants and/or agents from further constructing, intermeddling, occupying, using and/or in any other way interfering with, land Reference Iten Township Plot 214 (suit property) pending the hearing and determination of the appeal.
4. The application is premised on the grounds that the appellant has filed an appeal to this court which appeal is arguable and that unless the order sought is granted, the appeal will be rendered nugatory. The application is supported by the affidavit of the appellant in which the grounds on the face of the application are reiterated. Annexed to the affidavit is the plaint filed in the lower court, the ruling appealed from among other documents relating to the appellant’s suit and application for interlocutory reliefs.
5. In reply and opposition to the application, the 1st respondent, through the affidavit of its County Attorney, sworn on 30th September, 2015 contends that the appellant has failed to demonstrate that the appeal is arguable and with overwhelming chances of success. According to the 1st respondent, the appeal is not arguable because its substratum, certificate of lease, for the suit property was revoked by the Commissioner of Lands. The 1st respondent further contends that the appellant has not been in possession of the suit property hence cannot claim that she has suffered irreparable harm from activities on land which they have never occupied.
6. It is the 1st respondent’s case that refusal to grant the orders sought will not render the appeal nugatory as the loss and prejudice, if any, occasioned on the appellant is capable of being compensated by award of damages.
7. The 1st respondent explains that it is constructing the Iten modern market on the suit property, a vital public utility project for which a contract was awarded at a sum of Kshs. 310, 463, 990.00. Explaining that the project is meant to provide dignified and safe trading facilities for hundreds of traders, the 1st respondent states that halting the project would impede public services, continue to expose traders to elements and unnecessary conditions and cause greater prejudice to the residents of Iten township.
8. The 1st respondent depones that further delay of the project would expose it to heavy contractual penalties for breach, which the applicant has not demonstrated the financial capacity to shoulder should his suit eventually fail.
9. It is the 1st respondent’s case that the balance of convenience tilts overwhelmingly in favour of allowing a public utility project to proceed as private interest, especially one as tenuous as the appellant’s, must yield to overwhelming public interest.
10. Terming the appellant’s application, a deliberate tactic to delay the conclusion of the matter and the completion of the market project, the 1st respondent avers that the instant application is highly



prejudicial to it and to the administration of justice as it seeks to unduly delay the final determination of the substantive rights of the parties.

11. The 1st respondent urges this court to dismiss the application with costs to it.
12. The appellant filed a supplementary affidavit, sworn on 4th October, 2025 in which he reiterates the averments in his supporting affidavit. Besides reiterating the averments in the affidavit sworn in support of the application, the appellant depones as follows:
 - “6. That the 1st Respondent embarked on construction on the suit land in May 2025 with the aim of stealing a march on a subject matter that is the subject of litigation hereto aimed at disrupting the existing status quo to my detriment.
 7. That.....the Certificate of Lease in my possession is still valid and incapable of being revoked vide a letter given that the power to revoke certificate of title is a preserve of the Land and Environment Court only.
 8. That...I was in possession of the suit property where I had rental shops which were demolished by the 1st Respondent thereby bringing down my huge investments in the suit land.
 9. That ...a right to appeal is a constitutional right...”
13. The 3rd respondent filed grounds of opposition dated 30th September, 2025 in which it contends that:-
 - i. The applicant has no prima facie case with a probability of success as the basis of their claim is a letter of allotment that was lawfully revoked and therefore does not confer any enforceable proprietary interest in the suit property;
 - ii. The applicant has never taken possession of the suit property and as such, no irreparable loss or damage can arise nor is there any status quo to preserve in their favour;
 - iii. A mere letter of allotment does not amount to ownership of land in the absence of a registered title. The applicant’s claim falls short of establishing any registrable interest recognized under the [Land Registration Act](#) or [the Constitution](#) of Kenya.
 - iv. The revocation of the allotment was lawful and justified and the applicant failed to challenge the revocation through appropriate legal or administrative channels.
 - v. The application seeks to unjustly restrain the respondent from dealing with land it lawfully owns or occupies yet the applicant has not demonstrated any legal or equitable right that deserves protection by way of injunction.
 - vi. Granting an injunction in these circumstances would amount to inviting the court to sanction a speculative or unfounded interest, which would occasion injustice to the respondent.
 - vii. The application is an abuse of the court process, aimed at frustrating the 1st respondent’s legitimate and lawful use and occupation of the land.
 - viii. The balance of convenience tilts in favour of the 1st respondent who has been in actual occupation and/or lawful control of the suit property.
 - ix. The application fails to meet the threshold set out in *Giella v. Cassman Brown & Co. Ltd* (1973) E.A 358 for the grant of interlocutory injunctions.



- x. The applicants have failed to demonstrate sufficient grounds to warrant the issuance of the orders/reliefs being sought and thus the application ought to be dismissed and/or struck out with costs.
14. Pursuant to directions given on 30th September, 2025, the application was disposed of by way of written submissions.

Analysis and determination

15. I have carefully read and considered the circumstances leading to the filing of the instant application, the grounds taken up in support of the application the responses to the application and the submissions by the parties. I find the issue(s) for the court's determination, arising from the instant application to be: -
- i. Whether the applicant has made up a case for being granted a temporary injunction pending appeal; and
 - ii. What order(s) the court should make in the circumstances of this application/case?
16. The principles that undergird grant of a temporary injunction pending appeal were discussed by the Court of Appeal in the case of Fredick Wambani Chege vs James Karume Wanjema & 2 others (2005) KECA 227 (KLR) where the Court stated/held: -
- “The purpose of an injunction pending appeal is to preserve the status quo pending appeal. Although the jurisdiction of the Court is discretionary, it would however be wrong to grant an injunction pending appeal where the intended appeal is frivolous or where the refusal of an order of injunction would not render the intended appeal nugatory or where the order of injunction could inflict greater hardship than it would avoid. (See Madhupaper International Limited Kerr [1985] KLR 840 and J.K Industries vs. Kenya Commercial Bank & Another [1987] KLR 506)”.
17. In *Skycrapers Africaway Company Limited & Another v First Community Bank Limited & Another* (Civil Case 107 of 2016) [2025] KEHC 7264 (KLR) (Commercial and Tax) (26 May 2025) (Ruling) Neutral citation: [2025] KEHC 7264 (KLR) the High Court (F. Gikonyo J) stated/held: -
- “The Court's power to grant an injunction pending appeal is distinctive or sui generis. It falls under section 3A of the *Civil Procedure Act*....in determining whether to grant an injunction pending appeal, the overarching principle is to exercise discretion so as to prevent an appeal from being rendered nugatory.”
18. It is clear from the legal position espoused in the above cases and the cases cited by the applicant in his submissions, that this court has power to grant an injunction pending appeal.
19. On whether the applicant has made up a case for being granted an order of temporary injunction pending appeal, for the applicant to be granted that relief, he must demonstrate that his appeal is not frivolous or otherwise put that the appeal is arguable. The applicant has also to demonstrate that refusal of the injunction would render the intended appeal nugatory. The applicant must also demonstrate that grant of the order of injunction sought would not inflict greater hardship than it would avoid.
20. Having carefully read and considered the grounds taken up in support of the instant application and the responses thereto, there is no doubt that the applicant's appeal is arguable. I say this because from



- the affidavit evidence adduced by the applicant, the applicant is the registered proprietor of the suit property.
21. Whereas the respondents claim that the certificate of lease held by the applicant was revoked by the Commissioner of Lands, it is trite law that the Commissioner of lands had no power to revoke a certificate of Lease once issued. In the absence of any evidence showing that the applicant's certificate of lease in respect of the suit property was impeached through a lawful court process as contemplated by law, in particular Section 26 as read with Section 80 of the Land Registration Act 2026, this court is bound to take the applicant as the Prima facie bona fide owner of the suit property.
 22. Whilst the respondents, particularly the 1st respondent argue that it is in public interest to grant the orders as granting the orders may affect the implementation of the project it is carrying on the suit property, the respondents need to be reminded that public interest resides in obeying the law. A public institution or body or Government for that matter, which is equally bound to follow the laws of the land cannot be heard to say that public interest overrides private interest, if it undertakes processes/ projects in the name of the public without due regard to the rights of others and/or the rule of the law.
 23. A review of the orders sought by the applicant in the suit pending before the lower court and the grounds taken up in support of the appeal, show that failure to grant the orders herein sought will no doubt leave the applicant without any plausible remedy, at least going by its current pleadings, should he succeed in the appeal and the suit. Be that as it may, cognizance of the fact that granting the order sought in the circumstances of this case may inflict greater harm that it would avoid as a lot of public resources have been deployed in implementing the project, I decline to grant the order sought.
 24. On costs, this is the kind of application where the applicant would ordinarily have succeeded because he has demonstrated existence of an arguable appeal by showing that he holds a certificate of title that has not been rendered invalid in accordance with the applicable legal processes. The only reason this court has declined to grant the relief sought is the hardship and prejudice likely to occasion on the greater public if the order sought is granted. I have also taken into consideration that subject to the outcome of the suit, the applicant can still sue the respondent for wrongful acquisition of the suit property and recover damages.
 25. Having determined that ordinarily the applicant would have succeeded in the application, I am inclined to award him the costs of the application to be borne by the 1st respondent who I find totally responsible for causing the situation which led to filing of the instant application.
 26. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT ITEN THIS 9TH DAY OF DECEMBER, 2025.

L. N. WAITHAKA

JUDGE

In the presence of:-

Mr. Kagunza for the appellant/Applicant

Ms. Kimeli holding brief for Mr. Tororei for the 1st Respondent

N/A for the 2nd & 3rd Respondent

Court Assistant; Christine

