

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

KISUMU ELCLC NO. E053 OF 2025

KOGUTA COMMUNITYPLAINTIFF

VERSUS

THE NEW MUHORONI SUGAR COMPANY LIMITED.....DEFENDANT

RULING

This ruling is in respect of the Notice of Motion application dated 13/8/2025 brought by the Plaintiff seeking for orders that:-

- a) Pending the hearing and determination of this suit, an order of Injunction do issue restraining the Defendants (Respondents) by themselves, their agents and/or servants or otherwise whosoever be restrained from using, possessing, selling or disposing, cultivating, entering, trespassing being or remaining on or however interfering with Plaintiff's use or interests in all that parcel registration numbers L.R. No. 3977 and 3978 and/or in any other manner.
- b) The respondent bears the costs of this application.

The application was supported by the contents of the Supporting Affidavit sworn by Hesborn Oyoo Odero on 13th August 2025 and the annexures thereto and the Supplementary Affidavit sworn by the same deponent on 19th September 2025 and the annexure thereto.

The application was opposed vide the contents of the Replying Affidavit sworn by Eileen Chepkorir on 4th September 2025 and the annexures thereto.

The substantive order sought is an order of injunction pending hearing and determination of the suit.

The grounds upon which an order of temporary injunction may issue as set out in the case of Giella vs Cassman Brown and order 40 Rule 1 Civil Procedure Rules are that an applicant must demonstrate a prima facie case with a probability of success, that unless the order of injunction is issued the applicant will suffer irreparable injury and when the court is in doubt, it decides the matter on a balance of convenience.

The applicant's case is that it is the rightful and legal owner of the portion of land registration number land parcels L.R. No. 3977 measuring approximately 2,339 acres and L.R. No. 3978, 1,960 acres or thereabouts located in South West Muhoroni Town within Muhoroni Sub-County (the suit lands herein).

That the suit lands were reserved by the National Land Commission to the Land Settlement Fund Board of Trustees for the resettlement of the Koguta Community in accordance with the Land Act (Cap 280).

That this was in compliance with the court order in Kisumu HC JR No. 1 of 2020.

That on diverse dates from the month of June 2025, the Defendant forcefully encroached onto the suit lands without any legal rights and

that the acts by the Defendant were without the plaintiff's knowledge or consent and that the Defendant has since taken possession of the land conducting its agricultural activities, cutting down sugarcane, weeding, ploughing and thus denying the plaintiff access to enjoyment of the land. That the applicant is apprehensive that an ugly skirmish might erupt as the Respondent has put in local security who are armed with pangas and dangerous weapons. That unless the orders sought are granted, the applicant stands to suffer irreparable loss and damage which will not be adequately compensated in monetary terms.

To the Supporting Affidavit, the applicant annexed a certificate of registration for Community Groups for Koguta 2019 Community Based Organization. The applicant also annexed a copy of the Judgement in KSM ELC JR No. 1 of 2020 wherein the court issued an order of Mandamus compelling the Ministry of Lands to plan, survey and resettle the Koguta Community members on land parcels L. R. No. 3977 and 3978 within Kisumu County.

The applicant also annexed a Gazette Notice No. vol. CXXI- No. 27 dated 1st March 2019 showing that in case No. NLC/HL1/045/2027 Koguta Land Reclamation vs Muhoroni Sugar Company, the claim was allowed and the committee recommended that the Privatization Commission and Ministry of Land and Physical Planning assist in planning, survey and resettling the claimants on the land parcels Nos. L.R. 3977 and L. R. No. 3978.

To the application were also annexed photographs showing the activities on the land.

The Respondent's reply as contained in the Replying Affidavit is that there is no entity known as "the New Muhoroni Sugar Company Limited" hence both the application and the suit are non-starters.

That while the suit has been brought in the name of Koguta Community, the certificate of registration is for a different organization registered only on 14th May 2025. That Hesborn Oyoo Odero is not an official of Koguta Community and has no mandate to bring the proceedings in the name of Koguta Community. That the application for registration identified Dr. Andrew Obala I.D. No. 0999186 as Chairman and Victor Oriedo I/D No. 24179061 as Secretary and Pamela Okanga I.D No. 11089288 as Treasurer.

That the applicant has not satisfied the threshold for grant of a temporary injunction. That the inconsistencies in certificate of registration, the conflicting names of officials and the absence of proof of authority to act by Hesborn Oyoo Odero undermine the credibility and legal standing of the applicant's claim, hence no basis upon which the court can grant the equitable remedy of an injunction.

That the applicant has failed to demonstrate that they stand to suffer any irreparable harm as where damages provide a sufficient remedy, the injunction ought not to be granted.

That the community as reflected in the National Land Commission report has already established social amenities within the village.

That the suit properties belong to Muhoroni Sugar Company Limited who have titles to the same.

That the registered proprietor did not participate in the Judicial Review proceedings and was not heard.

That Koguta Community has always claimed only 454 acres of land reference No. 3977 on which they live and do subsistence farming and to no more land.

That it was not true that the National Land Commission reserved the two parcels of land for the Settlement of Koguta Community but rather recommended an alternative dispute resolution route.

That National Land Commission caused its determination to be gazetted stating that the claim by Koguta Community had been allowed.

That the National Land Commission had acknowledged the report from the Privatization Commission and the Ministry of Lands and Physical Planning to assist in planning, surveying and resettling the claimant on parcel Nos. 3977 and 3978.

That the confusing and clearly mixed up gazette Notice was not the decision of the Commission.

That the directive of the Commission that there be a process of mediation to determine how the 454 acres were going to be excised was never undertaken.

That the company has not interfered with any of the lands on which the members of the Koguta Community reside or use for subsistence

farming being the 454 acres that National Land Commission found that they occupy or with any of the public utilities on the land.

That the Environment and Land Court at Kisumu in Judicial Review No. 1 of 2020 could not make any award beyond what the National Land Commission had ordered for it was only asked to order implementation of the decision of the Commission and nothing more.

That the company has already made significant investments in the suit property including the procurement of fertilizer, extensive tilling of the land and engagement of hundreds of employees drawn from the local community. That grant of injunctive orders would disrupt these ongoing operations jeopardizing livelihoods and occasion imminent and irreparable harm to the company.

That the recommendations of the National Land Commission do not support the applicant's case at all.

That the lease of Muhoroni Sugar's assets was awarded following a transparent and competitive tender process, duly regulated by law and has since been perfected by payment of the requisite consideration and handover of the assets hence the company is in lawful possession and control of the land undertaking agricultural and commercial operation sanctioned by the Government and aligned to national objective for the revival of the sugar industry.

That the balance of convenience tilts in favour of the company.

The application was heard by way of written submissions pursuant to directions given on 22/9/2025. Written submissions dated 29th

September 2025 were filed by F. C. Bor & Co. Advocates on behalf of the applicant while written submissions dated 31st October were filed on behalf of the Respondent.

I have considered the application, the response thereto and the submissions filed. From the documents so far exhibited, there appears to be no controversy that the applicant community is entitled to land comprised in the suit lands. The controversy appears to be whether the National Land Commission recommended that the applicant community is entitled and therefore be settled on the entire of the two parcels of land that form the suit lands herein or on only 454 acres of parcel No. 3977.

The applicant relies on the Gazette Notice No. vol. CXXI- NO. 27 and the Judgement in KSM ELC JR CASE NO. 1 OF 2020 to contend that it is the entire of the two parcels of land that the National Land Commission set apart for their resettlement.

The applicant has not exhibited any other document to show the process that led to the Gazette Notice.

The Respondent, on the other hand, relies on the proceedings of the National Land Commission of the hearing of the applicant's claim for the two parcels of land that contain the findings of the National Land Commission that the applicant occupied only 454 acres of land parcel No. 3977 and its the recommendations.

These are matters to be interrogated at the main hearing.

In the meantime, it is clear from the proceedings that the applicant has not been in occupation of the entire of the two parcels of land and that is why the applicant sought for orders to compel the Ministry to settle its members thereon.

The Respondent has a claim to the lands based on the lease exhibited.

I find that to preserve the suit property pending hearing and determination of the rights of the parties, it is in the interest of justice that the status quo prevailing in terms of registration and occupation of the suit lands be maintained.

For the foregoing reasons, the application is allowed in the following terms;

- a) Pending the hearing and determination of the suit, an order of temporary injunction is hereby issued restraining the Defendant by itself, its agents and/or servants from interfering with the portion of the suit lands measuring 454 acres occupied by the members of the applicant and from selling, disposing of or in any manner alienating land parcels known as L.R. No. 3977 and 3978 pending hearing and determination of the suit.
- b) Costs of the application will be in the main suit.

Orders accordingly.

Ruling dated and signed at Kisumu and delivered virtually this 22nd day of January 2026.

**E. ASATI,
JUDGE.**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Chelimo for the applicant.

No appearance for the respondent.