

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC PETITION NO. E001 OF 2025

**IN THE MATTER OF: AN APPLICATION UNDER ARTICLE
10,19 & 22 OF THE CONSTITUTION OF KENYA**

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**IN THE MATTER OF: CONTRAVENTION & FURTHER
THREATENED CONTRAVENTION OF ARTICLES 40,47, 50 &
165 OF THE CONSTITUTION OF KENYA**

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**IN THE MATTER OF: THE CONSTITUTION OF KENYA
(PROTECTION OF FUNDAMENTAL RIGHTS & FREEDOMS)
PRACTICE & PROCEDURE RULES**

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**IN THE MATTER OF THE CONTRAVENTION OF SECTION 60 &
65 OF THE CONSTITUTION OF KENYA-REPEALED**

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**IN THE MATTER OF THE LAND REGISTRATION ACT, NO.6 OF
2012**

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IN THE MATTER OF THE LAND ACT, NO.3 OF 2012

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**IN THE MATTER OF: THE ENVIRONMENT & LAND COURT
ACT, NO. 19 OF 2011**

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**IN THE MATTER OF: THE REGISTERED LAND ACT, CAP 300
LAWS OF KENYA**

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**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT,
NO.18 OF 1990**

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**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP
22 LAWS OF KENYA**

BETWEEN

DAVID KIRWA.....

PETITIONER/APPLICANT

-VERSUS-

LILIAN CHEBET.....1ST
RESPONDENT/RESPONDENT
NICHOLAS KIPSAND.....
2NDRESPONDENT/RESPONDENT
THE HON.ATTORNEY
GENERAL..3RDRESPONDENT/RESPONDENT
THE CHIEF MAGISTRATE COURT
ELDORET LAW COURT.....4THRESPONDENT/RESPONDENT
THE CHIEF LAND
REGISTRAR..5THRESPONDENT/RESPONDENT

R U L I N G

1. The Petitioner (hereinafter referred to as “the Applicant”) did file a Notion of Motion dated 15.05.2025 (hereinafter referred to as “the present Application”) against the 1st to 4th Respondents (hereinafter referred to as “the Respondents” seeking for the following Orders; -
 - a) This Application be certified urgent and heard ex-parte in the first instance. (SPENT)
 - b) The Respondents whether by themselves, agents, servants or otherwise howsoever be restrained from entering upon, trespassing, selling, alienating, transferring, leasing or otherwise dealing with the property known as CHEMALAL FARM/107 pending the inter-parte hearing of this Application. (SPENT)
 - c) The Respondents whether by themselves, agents, servants or otherwise howsoever be restrained from entering upon, trespassing, selling, alienating, transferring, leasing or otherwise dealing with the property known as CHEMALAL FARM/107 pending the inter-parte hearing and determination of this Petition.

- d) The Officer commanding Jua Kali Police Post be directed to assist the Court in the enforcement of Order 2 and 3 above.
- e) The costs of this Application be provided for.
2. The facts and/or grounds in support of the above-mentioned prayers are outlined in the body of the present Application as well as the Supporting Affidavit thereof and can be summarised as follows; -
- i) The Applicant did aver that he is the lawful owner of the property known as CHEMALAL FARM PLOT.NO.107 measuring approximately 7 acres (hereinafter referred to as “the suit property”).
 - ii) On or about the year 2010, the 1st and 2nd Respondents herein did file a Claim for a portion of the suit property before the Uasin Gishu Land Dispute Tribunal in the proceeding known as CLAIM NO. 13 OF 2010.
 - iii) On the 04.10.2010, the Uasin Gishu Land Dispute Tribunal in the proceeding known as CLAIM NO. 13 OF 2010 did pronounce a Ruling to the effect that the 1st and 2nd Respondents were entitled to 1.9 Acres of the suit property.
 - iv) The Applicant did plead in the present Application that the issues raised before the Uasin Gishu Land Dispute Tribunal by the 1st and 2nd Respondents in the CLAIM NO.13 OF 2010 related to issues of Contract for Sale and therefore the Uasin Gishu Land Dispute Tribunal did not have powers to adjudicate the same.
 - v) However, on the 01.03.2011, the 1st and 2nd Respondents through the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 did adopt the Ruling of the Uasin Gishu Land Dispute Tribunal pronounced on the 04.10.2010 as an Order of the Court.

- vi) On the 16.11.2021, the 1st and 2nd Respondents did again move the Court in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010 for Orders to have to have the County Land Surveyor Uasin Gishu to proceed and demarcate, hive off and have the portion of 1.9 Acres transferred to them.
- vii) On the 17.02.2023, the Court in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010 did pronounce its decision on the 17.02.2023 allowing the 1st and 2nd Respondents prayers thereof.
- viii) The Applicant herein being aggrieved by the decision pronounced on the 17.02.2023 in the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010 did file an Application dated 12.10.2023 seeking to review and set-aside the Orders issued on the 17.02.2023 on the ground that a period of 10 years had since lapsed since the 1st and 2nd Respondents had been granted the Orders hence the Court's Orders were in contravention of Section 4 of the Limitation of Actions Act, Cap 22.
- ix) Unfortunately, the Application dated 17.02.2023 filed by the Applicant in the proceeding ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 was dismissed on the 29.04.2024 and consequently thereof, the Decree issued on the 01.03.2011 was implemented on the 11.08.2023.
- x) The Applicant is therefore of the considered view that the Ruling by the Uasin Gishu Land Dispute Tribunal dated 04.10.2010 in favour of the 1st and 2nd Respondent was unconstitutional and in contravention of Statutory provisions and therefore unlawful.
- xi) In addition to the above, the Applicant was of the considered view that the decision by the 4th Respondent on the 16.11.2021 to allow the 1st and 2nd Respondents to implement the Decree issued on the 01.03.2011 was

in contravention of Section 4 of the Limitation of Actions Act, Cap 22.

- xii) In essence, there is now a real and/or potential threat that the 1st and 2nd Respondents will likely enter and/or take possession of the 1.9 acres of the suit property and this Court should therefore issue prohibition Orders against such actions pending the hearing and determination of the main Petition.
 - xiii) The Applicant similarly did seek for an order of prohibition against the 1st and 2nd Respondents from charging, selling, disposing of or sub-dividing the suit property pending the hearing and determination of the main suit.
3. The present application was duly served on all the Respondents herein.
 4. The 1st and 2nd Respondents did express their intentions to oppose the present Application while the 3rd and 5th Respondents stated that they did not intend to participate.
 5. The 4th Respondent did not enter any appearance or participate in the present Application.
 6. As regards the 1st and 2nd Respondents, a Replying Affidavit dated 18.08.2025 was filed in opposition to the present Application based on the following facts and/or grounds; -
 - i) The 1st and 2nd Respondent did introduce themselves as the great grandchildren of one JANE CHEBOSINGA (deceased) who is the legal owner of the portion measuring 1.9 Acres on the property known as LR.NO.CHEMALAL/107 (hereinafter referred to as **“the suit property”**)

- ii) According to the Applicants, the suit property was subsequently passed on to MARY CHEBOSINGA who also passed the same to their mother RODAH CHEPKOECH.
- iii) Upon the demise of RODAH CHEPKOECH, the suit property was passed on to the 1st and 2nd Respondents as the beneficiaries being her children.
- iv) On or around the year 2010, the Petitioner herein did make a claim for the portion of 1.9 Acres which resulted to the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010.
- v) The UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 was duly heard on its merit and a determination made on the 04.10.2010 which did award the suit property to the 1st and 2nd Respondents herein.
- vi) Based on the determination pronounced on the 04.10.2010 in the proceedings known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010, the 1st and 2nd Respondent did proceed to institute the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 for purposes of adopting the same as an Order of the Court.
- vii) Indeed, on the 01.03.2011, the determination pronounced on the 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO.13 OF 2010 was adopted as an Order of the Court in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010.
- viii) In an effort to implement the Order issued on the 01.03.2011 in the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010, the 1st and 2nd Respondents did file a second Application dated

16.11.2021 seeking for Orders of demarcation of the suit property and registration of the same in their names.

- ix) The Application dated 16.11.2021 made in the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 was allowed on the 11.08.2023.
- x) The Applicant being dissatisfied with the Ruling pronounced on the 11.08.2023 in the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010 did file an Application dated 12.10.2023 seeking to review and set-aside the Orders issued on the 11.08.2023.
- xi) The Applicant's Application dated 12.10.2023 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010 was heard on merit and dismissed on the 29.04.2024.
- xii) In essence, the 1st and 2nd Respondents were of the considered view that the present Application was Res Judicata and an attempt to have the second bite at the cherry.
- xiii) The 1st and 2nd Respondents pleaded that the issue of ownership of the suit property had been determined by a Court of competent jurisdiction and this Court lacks jurisdiction to hear and entertain the present Application and/or Petition based on the provisions of Section 7 (2) of the Land Disputes Tribunal Act, Cap 303 A now Repealed.
- xiv) The 1st and 2nd Respondents further pleaded that the Petitioner herein did not exhaust the internal dispute resolution mechanisms within the Land Disputes Tribunal Act, Cap 303 A now Repealed by failing to prefer an Appeal to the Provincial Appeals Committee when the

UASIN GISHU LAND DISPUTE TRIBUNAL pronounced its determination 04.10.2010.

- xv) Consequently, the suit property is legally the asset of the 1st and 2nd Respondents who are in occupation and use of the same based on the determination of the UASIN GISHU LAND DISPUTE TRIBUNAL pronounced on the 04.10.2010 and the Order and Decree issued on the 01.03.2011 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010.
 - xvi) Consequently, an Order of Injunction issued against the 1st and 2nd Respondents as sought by the Applicant would amount to an eviction Order as it would prohibit their use of the suit property which is contrary to the Order and Decree issued on the 01.03.2011 in the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010.
 - xvii) The 1st and 2nd Respondent therefore sought this Court to dismiss the present Application with costs as the same is an abuse of the Court process and not merited.
7. Upon service of the Replying Affidavit dated 18.08.2025, the Applicant did not file any Further Affidavit and parties were directed to file their written submissions.
 8. The Applicant did file their submissions dated 08.09.2025 while the Respondents did elect not to file any submissions.
 9. The Court has indeed perused the present Application, the Response thereof by the 1st and 2nd Respondents as well as the submissions filed and identifies the following issues for determination; -

ISSUE NO.1-WHETHER OR NOT THIS COURT HAS JURISDICTION TO ENTERTAIN & DETERMINE THE PRESENT APPLICATION OR PETITION?

ISSUE NO.2- WHETHER OR NOT THE APPLICANT IS ENTITLED TO AN ORDER OF A TEMPORARY INJUNCTION?

ISSUE NO.3- WHETHER OR NOT THE PRESENT APPLICATION IS MERITED?

ISSUE NO.4- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?

10. The Court having identified the above-mentioned issues for determination, the same will now be discussed below.

ISSUE NO.1-WHETHER OR NOT THIS COURT HAS JURISDICTION TO ENTERTAIN & DETERMINE THE PRESENT APPLICATION OR PETITION?

11. The first issue for determination is whether or not this Court is couched with jurisdiction to hear and determine the present Application and/or the main Petition herein.
12. The issue of Jurisdiction has been raised by the 1st and 2nd Respondents.
13. According to the 1st and 2nd Respondents, the decision that the Applicant is seeking to challenge originates from the determination made on the 04.10.2010 in the proceedings known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 and which was subsequently adopted through the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 on the 01.03.2011.
14. The 1st and 2nd Respondent did plead in their Replying Affidavit dated 18.08.2025 that the determination pronounced on the 04.10.2010 in the proceeding known as UASIN GISHU LAND DIPSUTE TRIBUNAL CLAIM NO. 13 OF 2010 and ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010 on the 01.03.2011 were lawful decisions made by a competent Tribunal and Court respectively.

15. According to the 1st and 2nd Respondents, the Applicant was required as regards the determination pronounced on the 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 if aggrieved to file an Appeal before the Provincial Land Dispute Tribunal which the Applicant never did within the Thirty (30) Days period provided by law and in the Determination thereof.
16. As regards the Order and Decree made on the 01.03.2011 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010, the 1st and 2nd Respondents did plead that if the Applicant was once again aggrieved by the said Orders and Decree, an Appeal or Judicial Review Application to Quash the same would have been made.
17. Consequently, the 1st and 2nd Respondent were of the considered view that the present Application was Res Judicata the Application dated 12.10.2023 made by the Applicant in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 which was dismissed on the 29.04.2024.
18. Similarly, the 1st and 2nd Respondents were of the considered view that the main Petition herein was devoid of Jurisdiction as the Petitioner had not exhausted the internal dispute resolution mechanisms which requires an Appeal from the District Land Tribunal to be preferred to the Provisional Land Tribunal before the dispute is presented to a Court of Law.
19. To resolve the issue of jurisdiction, the Court will begin with the issue of whether the present Petition is properly before the Court or not.
20. The Petition filed by the Applicant dated 15.05.2025 seeks to have the determination dated 04.10.2010 in the proceedings known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO.13 OF 2010 and the subsequent Order and Decree issued

on the 24.02.2011 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010 as unconstitutional and a nullity in law.

21. The Applicant is of the view that the UASIN GISHU LAND DISPUTE TRIBUNAL did act ultra vires its statutory powers by hearing and determining an issue of contract between himself and the 1st and 2nd Respondent.
22. On the other hand, the 1st and 2nd Respondents in their Replying Affidavit to the Petition dated 18.08.2025 state that the suit property is one that was passed down from their Great Grand Mother, to the Grandmother, to their biological mother to themselves.
23. Clearly therefore, there is a question of fact and law that requires to be discussed in the Petition.
24. The main question is whether there is a Contract of Sale or any Agreement For Sale that was bound by the Provisions of Section 3 and 159 of the Registered Land Act, Cap 300 as pleaded by the Applicant in Paragraph 20 of the Petition.
25. If indeed this Contract of Sale and/or Agreement For Sale which was bound by the provisions of Section 3 and 159 of the Registered Land Act, Cap 300 existed, did the proceedings before the UASIN GISHU LAND DISPUTE TRIBUNAL infringe on the Applicant's constitutional rights.
26. The issues raised by the Applicant in the pending Petition indeed raise valid and legitimate constitutional questions that requires to be answered.
27. It is settled law that this Court has the jurisdiction to hear and determine constitutional issues which relate to land ownership, use and legal tenure.

28. As such, this Court hereby makes a finding that indeed it has jurisdiction to hear and determine the Petition before it filed by the Applicant herein.
29. On the Second issue of jurisdiction to hear and determine the present Application, the Applicant is seeking for a Temporary Injunction to prohibit the 1st and 2nd Respondents from entering upon, trespassing, selling, alienating, transferring, leasing or otherwise dealing with the suit property pending the hearing and determination of the pending Petition.
30. The 1st and 2nd Respondents in their response dated 18.08.2025 did raise the issue that the present Application was Res Judicata.
31. However, the 1st and 2nd Respondents were not clear which Application had similar Orders to the present one filed by the Applicant.
32. According to the Court's appreciation of the Applications which had been heard and determined, the Application dated 16.11.2021 was filed by the 1st and 2nd Respondents in the enforcement of the Orders and Decree issued on the 01.03.2011 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010.
33. Based on the Application dated 16.11.2021 by the 1st and 2nd Respondents, a Ruling dated 11.08.2023 was pronounced allowing the same in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010.
34. The Applicant being aggrieved by the Ruling pronounced on the 11.08.2023 did file an Application dated 12.10.2023 seeking for a Review and Setting-Aside of the same.
35. It is this Application dated 12.10.2023 that was determined on the 29.04.2024.

36. In essence therefore, the 1st and 2nd Respondents did not present any other Application for Temporary Injunction that had been filed by the Applicant in the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 hence the present Application cannot be declared Res Judicata to any application made in the above-mentioned file.
37. Apart from the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010, the 1st and 2nd Respondents have placed before the Court the proceedings known as ELDORET CHIEF MAGISTRATES COURT ELC CASE NO. E198 OF 2024.
38. In this proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC CASE NO. E198 OF 2024, there is an Application dated 03.12.2024 which was seeking for a Temporary Injunction against the 1st and 2nd Respondents over the property known as LR.NO.CHEMALAL FARM/107.
39. The Application dated 03.12.2024 was premised on a Plaint dated 02.12.2024 in the proceedings known as ELDORET CHIEF MAGISTRATES COURT ELC NO. E198 OF 2024.
40. Upon service of the Plaint dated 02.12.2024 and the Application dated 03.12.2024 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. E198 OF 2024 on the 1st and 2nd Respondents herein, a Preliminary Objection dated 20.01.2025 was filed.
41. The Preliminary Objection dated 20.01.2025 filed by the 1st and 2nd Respondents in the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. E198 OF 2024 was allowed on the 17.04.2025.
42. Could this Application dated 03.12.2024 filed in the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. E 198 OF 2024 be the one Res Judicata to the present Application.

43. In the Court's considered view and finding, this is to the negative.
44. The first reason as to why the Court is of a negative view is that the Plaintiff and Applicant the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. E198 OF 2024 was one JOSHUA NGETICH and not DAVID KIRWA who is the Petitioner and Applicant in the present Application.
45. Consequently, the Plaintiff in the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. E 198 OF 2024 and the present Petition are different and distinct.
46. Secondly and most importantly, the Application dated 03.12.2024 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. E198 OF 2024 was never heard and determined on merit.
47. This is because the 1st and 2nd Respondents did file a Preliminary Objection dated 20.01.2025 challenging the jurisdiction of that Court to heard and determine both the Plaint dated 02.12.2024 and the Application dated 03.12.2024.
48. Pursuant to the Ruling pronounced on the 17.04.2025, both the Plaint dated 02.12.2024 and the Application dated 03.12.025 were struck out for being Res Judicata to the determination of the UASIN GISHU LAND DISPUTES TRIBUNAL CLAIM NO. 13 OF 2010 and the Ruling and Decree pronounced on the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010.
49. In other words, the Court in the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. 198 OF 2024 did not considered and/or make any determination on the prayers of Temporary injunction sought therein.

50. In light of the foregoing, this Court is of the considered view and finding that the Application dated 03.12.2024 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. 198 OF 2024 is not *Res Judicate* the present Application.

51. In conclusion thereof, this Court is of the considered view and finding that it has jurisdiction to heard and determine both the present Application and the pending Petition before it.

ISSUE NO.2- WHETHER OR NOT THE APPLICANT IS ENTITLED TO AN ORDER OF A TEMPORARY INJUNCTION?

52. The second issue is whether or not the Applicant herein is entitled to an Order of Temporary Injunction against the 1st and 2nd Respondents over the portion measuring 1.9 Acres on the property known as LR.NO.CHEMALAL FARM/107 pending the hearing and determination of the pending Petition.

53. The Applicant's main reason for seeking this prayer is that his right of ownership, occupation and possession was infringed by the UASIN GISHU LAND DISPUTE TRIBUNAL in their determination dated 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 and the Ruling and Decree pronounced on the 01.03.2011 in the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010.

54. The 1st and 2nd Respondents on the other hand have opposed the prayer for injunction on the ground that the determination dated 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 and the Ruling and Decree pronounced on the 01.03.2011 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 had already been implemented and there were in occupation and use of the same.

55. In essence, any Orders of injunction would lead to eviction of the 1st and 2nd Respondents from their lawful portion of land

contrary to the lawful decisions both the District Land Dispute Tribunal and the Chief Magistrates Court.

56. In the case of **GIELLA-VERSUS-CASSMAN BROWN & COMPANY LIMITED (1973) EA 358**, the Court of Appeal established the principles for consideration of injunction applications as follows; -

“a). where he is required to demonstrate that he has a prima facie case with serious triable and arguable issues with a probability of success against the respondent. The test on prima facie case does not mean establishing a case beyond reasonable doubt;

b). He will suffer irreparable harm/injury which cannot be adequately compensated by damages;

c). Balance of convenience: In granting an injunction under this condition the court must be satisfied that the hardship or inconvenience which is likely to be caused to the applicant by declining the injunction will be greater than that which is likely to be caused to the respondent.

57. It is based on the above ingredients and/or principles that this Court will evaluate and determine whether the Applicant herein is entitled to the prayer of injunction or not.

58. The existence of one element alone does not automatically entitle an applicant to an order of injunction without considering the other elements. See **KENYA COMMERCIAL FINANCE BANK COMPANY LIMITED-VERSUS-AFRAHA EDUCATION SOCIETY (2001) Vol.1 EA 86**.

INGREDIENT NO. 1- PRIMA FACIE CASE

59. The first ingredient for consideration is whether or not the Applicant has established a prima facie case.

60. In the case of **MRAO LIMITED-VERSUS- FIRST AMERICAN BANK OF KENYA & 2 OTHERS (2003) KLR 125**, The Court did explain what amounts to a prima facie case as follows; -

“a prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case 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 as to call for an explanation or rebuttal from the latter.”

61. In the present case, the Applicant who is the Petitioner has pleaded that the determination pronounced on the 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 was ultra vires the statutory powers provided under the Land Dispute Tribunal Act, Cap..... now Repealed.

62. Consequently therefore, the determination pronounced on the 04.10.2010 in the UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 and adopted on the 01.03.2011 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 did infringe on his ownership rights over the property known as LR.NO.CHEMALAL FARM/107 and therefore were unconstitutional and/or annulity.

63. The 1st and 2nd Respondents on the other hand through their Response to the Petition dated 18.08.2025 have disputed the Applicant’s claim of constitutional infringement.

64. The 1st and 2nd Respondents did plead that the determination pronounced on the 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 and adopted as an Order of the Court on the 01.03.2011 in

the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 was a lawful decision by competent courts and should be respected.

65. The 1st and 2nd Respondents did plead that there are in occupation and use of the portion measuring 1.9 Acres within the property known as LR.NO.CHEMALAL FARM/107 in line with the determination of the Land Dispute Tribunal.
66. As stated earlier in Issue No. 1, the Applicant herein raises the issue of whether the Uasin Gishu Land Dispute Tribunal handled a dispute emanating from an Agreement For Sale or not in arriving its determination pronounced on the 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO.13 OF 2010.
67. Secondly, the pending Petition seeks to raise the issue whether or not the Dispute Land Tribunal as established under the LAND DISPUTE TRIBUNAL ACT, CAP..... now repealed had the powers or not to hear and determine the ownership of the property known as LR.NO.CHEMALAL FARM/107 between the parties herein.
68. These two issues raised in the pending Petition demonstrate genuine and arguable Petition raised by the Applicant herein which requires the 1st and 2nd Respondents together with the other Respondents to rebut and/or comment of the same and a determination to be made.
69. As such, this Court is of the considered view and finding that the pending Petition indeed is one that establishes a prima facie case.

INGREDIENT NO.2- IRREPARABLE HARM/INJURY

70. The second ingredient for consideration is the nature of injury that the Applicant stands to suffer if the Order for Injunction is not issued.
71. According to this ingredient, the Applicant must demonstrate that if the Order for injunction is not granted, then it might or will occasion irreparable harm and/or injury thereof.
72. In the event the harm and/or injury is one which can be compensated by way of damages, then an injunction need not be issued.
73. In the present Application, the Applicant did not state the nature of injury that he stands to suffer if the injunction is not issued.
74. In fact, the Applicant did admit that the determination pronounced on the 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 and the Order of adopted made on the 01.03.2011 in the proceedings known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 had already been implemented.
75. In other words, the Applicant did accept that the portion of 1.9 acres within the property known as LR.NO.CHELAMAL FARM/107 was in the possession and use of the 1st and 2nd Respondent since 2011.
76. According to the Court's appreciation of the facts in this Petition, the Ruling pronounced on the 17.02.2023 and the Decree issued on the 11.08.2023 based on the Application dated 16.11.2021 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 is what has resulted to the present Petition.

77. The Ruling pronounced on the 17.02.2023 and the Decree issued on the 11.08.2023 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO. 9 OF 2010 was directing the County Land Surveyor to excise and/or hive off the portion measuring 1.9 Acres on the property known as LR.NO.CHEMALAL/107 and the Deputy Registrar of the Executive Officer thereof to execute the relevant documents for transfer.
78. The Applicant did not present any action by the 1st and 2nd Respondents that demonstrates their intention to either sale, sub-divide, lease and/or part with possession and/or ownership of the suit property.
79. In any event, the 1st and 2nd Respondents occupation and use of the portion of 1.9 Acres within the property known as LR.NO.CHEMALAL/107 is premised on various determinations and Court Orders issued by the UASIN GISHU LAND DISPUTE TRIBUNAL and the Chief Magistrates Court, Eldoret.
80. Consequently, until and unless this Court makes a Contrary decision and either sets-aside and/or Quashes the determination pronounced on the 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 and the Adoption Order issued on the 01.03.2011 in the proceeding known as ELDORET CHIEF MAGISTRATES COURT AWARD NO.9 OF 2010, then the 1st and 2nd Respondents are the lawful and legitimate owners of the 1.9 acres portion of land within the property known as LR.NO.CHEMALAL/107.
81. In essence, this Court hereby is of the considered view and finding that the Applicant has not demonstrated and proved this ingredient.

INGREDIENT NO.3- BALANCE OF PROBABILITY.

82. The last ingredient is whose favour will the balance of probability tilt.
83. Based on the findings in Issue No.2, the 1st and 2nd Respondents herein are the persons in occupation and use of the suit property.
84. The occupation and use of the suit property by the 1st and 2nd Respondents is premised on the determination made on the 04.10.2010 in the proceeding known as UASIN GISHU LAND DISPUTE TRIBUNAL CLAIM NO. 13 OF 2010 and Adopted as an order of the Court on the 01.03.2011 in the proceeding known as ELDORET CHIEF MAGISTRATES AWARD NO.9 OF 2010.
85. If indeed the Court was to issue an Injunction against the 1st and 2nd Respondents as sought by the Applicant herein, then it would mean that the 1st and 2nd Respondents would not be able enjoy the occupation and use of the suit property as pronounced by the UASIN GISHU LAND DISPUTE TRIBUNAL and the ELDORET CHIEF MAGISTRATES COURT.
86. The Applicant's reason that the 1st and 2nd Respondents upon implementation of the Decree issued on the 11.08.2023 are likely to sale, transfer, sub-divide, lease and/or part with possession or occupation of the suit property is in the Court's view pre-mature as there is no evidence that the County Land Surveyor has commenced the process and even if the same is on-going, the Court has powers to re-visit the issue of injunction once sufficient evidence is tabled that there is such a threat.
87. In other words, this Court is of the view that the balance of probability tilts in favour of the 1st and 2nd Respondents herein.

88. Based on the findings in Ingredient 2 and 3 hereinabove, this Court hereby makes a finding that the Applicant herein has not satisfied all the ingredients required to issue an order of Injunction.

ISSUE NO.3- WHETHER OR NOT THE PRESENT APPLICATION IS MERITED?

89. The Court having made a finding that the Applicant has not satisfied all the ingredients of granting an Order of Injunction, the present Application is not merited.

ISSUE NO.4- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?

90. Costs usually follow the event and, in this instance, the Applicant having not succeeded is condemned to pay costs.

CONCLUSION

91. In conclusion, this Court hereby makes the following Orders in determination of the present Application; -

A.THE NOTICE OF MOTION APPLICATION DATED 15.05.2025 IS NOT MERITED AND THEREFORE DISMISSED FORTHWITH.

B.THE APPLICANT IS CONDEMNED TO PAY COSTS OF THIS APPLICATION TO THE 1ST AND 2ND RESPONDENTS ONLY.

DATED, SIGNED and DELIVERED in ELDORET this 20TH DAY OF JANUARY, 2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:
COURT ASSISTANT: Brian

COUNSEL FOR THE APPLICANT: Mr. Kipkoech holding brief
Ms.Cherono

COUNSEL FOR THE RESPONDENTS: Ms. Cheruiyot holding brief Mr.
Kwame fort eh 3rd – 5th Respondent