



**Kimba v Kageni (Sued as the Legal representative and Administrator of the Estate of John Mutirimu Ikamba - Deceased) & 2 others (Environment and Land Case E034 of 2025) [2026] KEELC 15 (KLR) (15 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 15 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND CASE E034 OF 2025  
JO MBOYA, J  
JANUARY 15, 2026**

**BETWEEN**

**NAFTALI M'MBIRO KIMBA ..... PLAINTIFF**

**AND**

**ANN KAGENI [ SUED AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF JOHN MUTIRIMU IKAMBA - DECEASED] ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, MERU NORTH ..... 2<sup>ND</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. What is before me is the Notice of Motion Application dated the 24.11.2025 filed by/on behalf of the Plaintiff/Applicant [hereinafter referred to as the Applicant] and wherein the Applicant has sought the following reliefs:
  - a. This application be certified as urgent and the be heard Ex-parte in the first instance..
  - b. An interim temporary order of injunction be issued restraining the first Defendant either by herself, her agents, employees and/or servants or otherwise whomsoever from subdividing, transferring, offering for sale, letting, building, developing or in any manner whatsoever from parting with the suit property being LR No. Nyambene/Antutwe-njoune/1879 pending the hearing of the this application inter-partes.
  - c. An interim temporary order of injunction be issued restraining the first Defendant either by herself, her agents, employees and/or servants or otherwise whomsoever from subdividing, transferring, offering for sale, letting, building, developing or in any manner whatsoever from



parting with the suit property being LR No. Nyambene/Antutwe-njoune/1879 pending the hearing and determination of the suit.

- d. Costs of this application be provided for.
2. The subject application is anchored on various grounds, which have been enumerated at the foot thereof. In particular, the Applicant has contended that same is the lawful and registered owner of the suit property, namely; LR No. Nyambene/Antutwe-njoune/1879. Additionally, the Applicant has averred that the suit property was fraudulently and illegally transferred to and registered in the name of John Mutirimu Ikimba [now deceased]. Furthermore, the Applicant has contended that following the transfer and registration of the suit property in the name of the deceased, same [Applicant] lodged a complaint with the land adjudication and settlement officer, challenging the adjudication and registration of the suit property in the name of the deceased.
  3. Nevertheless, the Applicant posits that the complaint which was lodged with the Land Adjudication and Settlement Officer, was never heard or determined. On the contrary, the Applicant contends that his brother [now deceased] passed on before the complaint could be heard and finalized.
  4. Additionally, the Applicant has averred that following the death of his brother [deceased] same took out citation against the 1<sup>st</sup> Respondent herein and thereafter the 1<sup>st</sup> Defendant obtained Grant of Letters of Administration. In this regard, the Applicant contends that the suit property has since been transferred and registered in the name of the 1<sup>st</sup> Defendant and thus the 1<sup>st</sup> Defendant is likely to alienate or dispose of the suit property.
  5. The application is similarly premised/supported by the affidavit sworn by the Applicant on the 24/11/2025 and wherein the Applicant has reiterated the contents of the grounds underpinning the application. Pertinently, the Applicant seeks to procure an order of temporary injunction to restrain the Respondents/Defendants and in particular, the 1<sup>st</sup> Defendant/Respondent from inter-alia building on or developing the suit property pending the hearing of the suit.
  6. The application was served upon the Defendants/Respondents. However, neither of the Defendants/Respondents filed any response to the application. For good measure, no response is traceable from the court Tracking System [CTS] of the court.
  7. The application came up for hearing today [15/01/2026] whereupon the Learned Counsel for the Applicant adopted the grounds at the foot of the application: the contents of the supporting affidavit and thereafter highlighted two key issues, namely; the Applicant has established and demonstrated a prima facie case with probability of success on account that the Applicant has been living/residing on the suit property for more that 30 years; and the Applicant shall be disposed to suffer irreparable loss unless the orders sought are granted. In this regard, the Applicant contends that same is entitled to the grant of an order of temporary injunction in respect of the suit property.
  8. I have reviewed the application; the contents of the supporting affidavit and the submissions canvassed by learned counsel for the Applicant. I find that the determination of the subject Applicant turns on two key issues, namely; whether the Applicant has established a prima facie case with probability of success or otherwise; and whether the Applicant shall be disposed to suffer irreparable loss if the orders sought are not granted.
  9. Regarding the 1<sup>st</sup> issue, it is important to highlight that any Applicant, the current Applicant not excepted, is obligated to prove and demonstrate the existence of a prima face case as a threshold issue, before same can partake of an order of temporally injunction. Instructively proof of a prima face case



is a pre-condition that must be met/satisfied before an Applicant can pursue the prayer for temporarily injunction.

10. Put differently, where an Applicant is unable to prove the existence of a prima facie case then such an Applicant has no business progressing the claim to demonstration of irreparable loss. Suffice to state that a prima facie case is the key that unlocks the door towards pursuing the grant of temporary injunction.
11. What constitutes a prima facie case is now well settled and established. In the case *Mrao Ltd v First American Bank of Kenya Ltd & 2 others (Civil Appeal 39 of 2002) [2003] KECA 175 (KLR) (7 March 2003)*, the court of appeal expounded on the meaning and import of a prima facie case and stated thus:

A prima facie case in a civil application included but was not confined to a genuine and arguable case. It was a case which, on the material presented to the court, a tribunal properly directing itself would conclude that there existed a right which had apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.
12. Has the Applicant proven or established a prima facie case? The Applicant herein concedes that the suit property was adjudicated and registered in the name of John Mutirimi Ikimba now deceased. In addition, the Applicant concedes that the deceased was his brother. Besides, the Applicant posits that he lodged a complaint with the land adjudication and settlement officer complaining about the adjudication of the suit property in the name of the deceased. Nevertheless, the Applicant admits that the complaint was never heard nor finalized by the time the deceased passed on.
13. What becomes apparent is to the effect that the suit property emanated from the adjudication and demarcation process and hence, any party, the Applicant not excepted, was under obligation to challenge the process in accordance with the provisions of the *Land Consolidation Act*, Chapter 283 Laws of Kenya or *Land Adjudication Act*, Chapter 284 Laws of Kenya [whichever is applicable]
14. To the extent that the suit property was birthed by the adjudication and demarcation process; and there being no evidence of objection or appeal to the minister [if at all], a question does arise as to whether the Applicant herein can now ventilate his [sic] claims before this court. The question before hand can only be interrogated and addressed during the plenary hearing and not otherwise. However, there is no gainsaying that the lack of objection or appeal to the minister [if at all] will and does impact on proof of prima facie case.
15. Other than the foregoing, there is also the question of whether or not the subject suit, which is founded on fraud; illegality and misrepresentation has been mounted timeously and in accordance with the prescription of the law and in particular, the provisions of section 4 of the *limitation of actions act* chapter 22 laws of Kenya. Notably, the Applicant posits that the impugned transfer and registration in the name of the deceased took place in the year 1997. However, it is apparent that the suit was not filed upto the year 2025; and hence the question of limitation[s] maybe an issue for consideration in the fullness of time.
16. Thirdly, though the Applicant claims to be the owner of the suit property in terms of ground 1 of the application, the Applicant quickly changes tune and acknowledges that the suit property is currently registered in the name of the 1<sup>st</sup> Defendant. The question of ownership and legitimacy of the Applicant's claims is a substantive issue which can only be determined after a full hearing.
17. Be that as it may, what is apparent as of now, is that the 1<sup>st</sup> Defendant/Respondent is the registered owner of the suit property and thus same is entitled to be treated as the prima facie owner of the suit property, subject to the overriding interests [if any].



18. On the contrary the challenge to the 1<sup>st</sup> Defendant/Respondent's title can only be dealt with and disposed of at the tail – end of the hearing.
19. In my humble view, the facts of the case and the evidence contained at the foot of the supporting affidavit sworn by the Applicant do not demonstrate or establish the existence of a prima facie case with probability of success. For good measure the Applicant will be called upon to tender further evidence albeit during the hearing towards demonstrating his entitlement [if at all] to the suit property.
20. Based on the foregoing, I am not persuaded that the Applicant herein has established a prima facie case with probability of success.
21. Moreover, the Applicant herein seems to be approbating and reprobating as pertains to the nature of his rights [if at all] in respect of the suit property. I say so because the Applicant herein had previously approached this court vide Meru ELC E021 of 2025 and wherein same contended that he had acquired rights to and title to the suit property by way of adverse possession. The said claim was the subject of a ruling rendered by this court on the 22/09/2025, where the court declined to grant orders of temporary injunction.
22. To my mind, the Applicant has not met the threshold of what constitutes a prima facie case. Absent a prima facie case, a court of law ought to terminate the application for temporary injunction, without venturing forward to discern whether or not there is a likelihood of irreparable loss arising or accruing. [See the holding of the court of appeal in the case of [Kenya Commercial Finance Company Limited Vs Afraha Education Society (2001) I EA 8.]
23. Turning to the 2<sup>nd</sup> issue, namely; whether the Applicant herein shall be disposed to suffer irreparable loss, it is important to highlight that the Applicant has neither adverted to nor highlighted the issue of the irreparable loss at the foot of the application. It is imperative to underscore that irreparable loss can only be established by way of evidence, deponed to and substantiated in the supporting affidavit. Where no deposition is made as pertains to irreparable loss, the court cannot be expected to proceed on the basis of inference; assumption; or speculation. Simply put, irreparable loss must be documented and substantiated.
24. What constitutes irreparable loss must be such a loss which is incapable of compensation on the basis of a monetary award. It must not be remote. Similarly, it must not be fanciful. In the case of Nguruman Limited -vrs- Jan Bonde Nielsen and others [2014] eKLR, the Court of Appeal elaborated on the import of irreparable loss and stated as hereunder;  
  
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.
25. I have already pointed that the Applicant did not advert to or depone the issue of irreparable loss. Moreover, the Applicant has not substantiated the loss [if at all] same is disposed to suffer. It is not enough to say that the 1<sup>st</sup> Defendant/Respondent will dispose of the suit property. In any event, there is no gainsaying that the registered owner of a property is bestowed with certain rights and interests over the property. Consequently, the registered owner is entitled to partake of such rights, unless there exist exceptional and peculiar circumstances to warrant otherwise.
26. Moreover, it is not lost on me that the grant of a temporary injunction in respect of the instant matter, may very well be tantamount to negating the title currently held by the 1<sup>st</sup> Defendant/Respondent,



albeit at an interlocutory stage. Such kind of endeavor is not fathomable and ought to be avoided so as to avert injustice.

27. Back to the decision in the case of Nguruman Limited -Vrs- Jan Bonde Nielsen and others [2014] eKLR and wherein the court addressed the question of granting an order of temporary injunction as against the registered owner of the property.

28. The court observed thus:

It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.

29. Flowing from the foregoing, it must have become evident that the Applicant herein, has neither established nor proven the requisite ingredients that underpin the grant of an order of temporary injunction.

### **Final Disposition**

30. Having appraised the subject application; the supporting affidavit and the applicable law, I come to the conclusion that the subject application is bereft of merits and thus same warrants dismissal.

31. In the upshot, the final orders that commend themselves to me are as hereunder:

(i) The application dated the 24/11/2025 be and is hereby dismissed.

(ii) Costs of the application shall however abide the outcome of the suit.

32. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 15<sup>TH</sup> OF JANUARY 2026.**

**OGUTTU MBOYA, FCIArb; CPM [MTI-EA].**

### **JUDGE**

In the presence of:

Hussein – Court Assistant.

Mr. Jesse Mwiti for the Plaintiff/Applicant.

No appearance for the Defendants

