

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KAPSABET
ELCLCOS CASE NO. E006 OF 2025

NEHEMIAH KIPLAGAT TUITOEK.....
APPLICANT

-VERSUS-

CHARIT KIRWA KOGO.....1ST
RESPONDENT

SUSANA TARKWEN.....2ND
RESPONDENT

RULING

1. The instant ruling is in respect of two applications namely;
 - a) A Notice of Motion dated 12th September 2025 by the applicant through Lagat Joshua and Company Advocates (The first application) seeking the following orders;
 - i. Spent
 - ii. Spent

- iii. This Honourable Court be pleased to issue a temporary order of injunction restraining the respondents , their agents, assigns, employees, personal representatives and anyone claiming under them whatsoever from any dealing be it trespassing, forceful invasion and plucking tea bushes on the suit land parcel **NANDI/KEBULONIK/596** (The suit land herein) owned by the applicant and or in dealing in any manner likely to affect the current status on the ground pending hearing and determination of this suit.
 - iv. The OCS Kabiyet police station to supervise compliance of this order.
 - v. The costs of the application be borne by the Respondents.
 - vi. Such other order be issued that the Honourable Court deems fit.
- a) A Notice of Motion dated 4th November 2025 by the Applicant through Lagat Joshua and Company Advocates (The second application) for the orders infra;
- i. That the Respondents be cited for contempt for defying court orders issued on 16th September 2025.

- ii. That the Honourable Court be pleased to summon the Respondents to show cause why they should not be punished for contempt of Court orders.
 - iii. That an order for committal be made against the respondents to prison for a period not exceeding six (6) months or in the alternative a fine to be determined by the Honourable Court.
 - iv. That the costs of this application be provided for.
2. The first application is founded upon the Applicant's 22-paragraphed affidavit sworn on even date and the documents marked as **'NAT-1 to NAT-4'** including photographs and a police abstract annexed thereto as well as eight grounds stated on its face. In a nutshell, the Applicant's complaint is that the Applicant is an adverse possessor of a portion measuring 5.75 acres of the suit land having been in possession of the same for a period exceeding 12 years upon purchase since the year 2008. That the Respondents and agents invaded a portion with tea bushes on the 9th September 2025 and plucked tea bushes owned by the Applicant on the suit land as shown in the photographs. That the Respondents continue with acts of trespass including threats on the Applicant with main aim of dispossessing me. That should the

Respondents proceed with the illegal activities on my land parcel, there is an imminent risk that my claim on the land parcel shall be defeated

3. The second application is premised upon grounds (a) to (j) stated on the face of the same as well as the applicant's affidavit of even date and copies of documents including the order **(NKT-1)**, the affidavit of service **(NKT-2)** and photographs **(NKT-4)** annexed to the affidavit. In summary, the Applicant's lamentation is that the Applicant moved this Honourable Court for a restraint order against the Respondents from invading the suit land and obtained a status quo order which was duly served on the Respondents. That by the said status quo orders, the Respondents were refrained from further entry into the suit land until the suit is heard and determined but the Respondents have regained forceful entry into the suit land, constructed a structure, fell down trees, burnt charcoal and cultivated on the Applicant's portion thereof. That the Applicant's quiet use and possession of the suit land has been threatened thereby hence precipitating the second application.
4. The 1st and 2nd Respondents opposed the first application by way of their replying affidavits of twelve paragraph and

twenty-one paragraphs respectively both sworn on 22nd September 2025. They termed the application, inter alia, bad in law, incompetent, brought in bad faith, ill will and urged the court to dismiss it with costs.

5. So, the 1st Respondent averred in part that there is another suit, E006 of 2025 between her and her co-defendant and one Aileen Laitobir in this Court. That temporary orders that appear on the face of it were obtained improperly and irregularly through misrepresentation as she together with her co-respondent are the registered proprietors of the suit land and they cannot be stopped from being in possession on it. That the persons appearing in the photographs attached to the application are her children. That the application and the orders are coercive, intimidating, harassing and meant to remove them from the suit land without the suit being heard

6. The second Respondent stated, inter alia, that whereas the suit land is alleged to be in her name and her co-respondent, no explanation is given on how it came about as she never participated in any process thereof. That the applicant has attempted to evict her together with her children and grandchildren from the suit land where they

have occupied all along without her participation hence, would be condemned unheard. That the subsisting orders must not be confirmed as they are improper, irregular and illegally obtained. That an injunction ought not be allowed as the threshold in **Giella-vs-Cassman Brown & Company Ltd (1973) EA 358**, has not been attained in the first application.

7. By the replying affidavit, the 1st Respondent opposed the second application which she claimed was made in bad faith, ill will and ulterior motives. She proceeded to adopt the contents of the 1st Respondent's replying affidavit and implored the Court to dismiss the application with costs. She averred in part, that the orders were not served on her mother who is her co-respondent and herself thus, they did not breach the orders as they were not aware of the same.
8. Moreover, the 1st Respondents averred that the person appearing is neither their Area Chief, Mrs. Mildred Kemei and nor the area assistant chief, Victor Yego and not Victor Kogo as alleged by the Applicant. That also, the house appearing in the photograph is fairly old an indication that they are in possession and occupation of the suit land.

9. The 2nd Respondent opposed the second application and urged the Court to dismiss the same with costs by her 28-paragraphed affidavit sworn on 17th November 2025. She averred inter alia, that the suit land where they have erected their homes and carry out subsistence farming, is alleged to be in her name and that of her co-respondent. That the orders akin to status quo, are temporary injunctive orders which cannot be enforced in a way that would precipitate their eviction from the suit land and defeat their defence yet the suit must be heard for the ends of justice

10. Furthermore, the 2nd Respondent averred that the application is in vain, an afterthought, hinged on suspicion and intended to punish her. That her co-respondent and herself are not aware of the interim orders of status quo in place. That the orders were granted in error hence, the application is flawed, incompetent, incurably defective and an abuse of the Court process.

11. In his further affidavit of eighteen paragraphs sworn on 19th November 2025, the applicant stated in part that the suit land is registered in the name of the Respondents who do not contest his possession and occupation of the same in terms of 5.75 acres thereof. That the orders

emanated from his application dated 12th September 2025 thus, the allegations of irregularity and impropriety is misconceived and falsehood. That the orders ought to be complied with and any disobedience by the parties amounts to contempt of court. That the Respondents continue to invade, trespass and destroy property and deny the applicant's employees on the suit land thus, the application be allowed in the interest of justice.

12. Both applications were heard by written submissions further to the Court's directions as disclosed in the proceedings of 11th November 2025 and 9th December 2025.

13. Consequently, learned Counsel for the Applicant filed submissions dated 5th December 2025 in respect of both applications referring to the respective orders sought therein, the replying affidavits and implored the Court to allow the applications. Counsel framed issues for determination inclusive of whether the Respondents are in contempt of Court orders issued on 16th September 2025. In discussing the issues, Counsel maintained that the Respondents disobeyed lawful orders of 16th September 2025 and that both applications be allowed accordingly. To reinforce the submissions, Counsel relied on, inter alia,

the case of **Gatharia K. Mutitika-vs-Baharini Farm Limited (1985) KLR 227** on contempt of Court and the case of **Nguruman Limited-vs-Jan Bonde Nielsen & 2 others (2014) eKLR.**

14. In the submissions uploaded in the e-filing platform on 8th December 2025 in respect of the second application by Kipkosgei Choge and Company Advocates for the Respondents, reference was made to sections 3 and 3A of the Civil Procedure Rules 2010, Constitutional Court of South Africa on the import of the Rule of Law of compliance with Court orders, the case of **Peter K. Yego& others-vs-Pauline Wekesa Kodo ACC No. 194 of 2014**, among others. Counsel submitted that there was no satisfaction that there was willful disrespect of the Court orders by the Respondents.

15. Having duly considered both applications, respective responses and rival submissions inclusive of the authorities cited therein, are the applications merited?

16. It is noteworthy that the principal order of injunction sought in the first application is an equitable remedy. The same can be granted at the discretion of the court as noted in the case of **National Bank of Kenya Ltd-vs-Shimmers Plaza Ltd (2009) KLR 278 at 283.**

17. Order 40 of the Civil Procedure Rules 2010 governs temporary injunctions and temporary orders. Also, I am well guided by, inter alia, the celebrated decision in the case of **Giella-vs-Cassman Brown & Company Ltd (1973) EA 358** pertaining to injunctive relief.

18. It is established law that temporary injunction must satisfy the effect of flora and fauna; see **Bob and Ursulla Brenneisen & 7 others-vs-Shanzu Water Front (2016) eKLR.**

19. This Court subscribes to the decision in the case of **Hutchings Biemer Ltd-vs-Barclays Bank of Kenya & others (2006) eKLR**, where the Court of Appeal opined thus;

“.....Injunctive orders are meant to preserve property and maintain the status quo.....”

20. The disclosure from the e-filing platform is that the orders of 16th September 2025 with a penal notice were not duly served. There is no demonstration by the Applicant of deliberate disobedience of the said orders by the Respondents.

21. It must be borne in mind that on 16th September 2025, this Court granted interim orders of status quo over a portion of the suit land. They were to subsist pending the hearing and determination of the application dated 12th September 2025.
22. This Court is not unaware of the character of contempt of Court; see **Re Bramble Vale Ltd (1970) 1 CH 128 at 137 and Woburn Estate Ltd-vs-Margaret Bashforth (2016) eKLR.**
23. Furthermore, in the case of **Hadkinson-vs-Hadkinson (1952) 2 ALL ER 567,** it was held that there is an unqualified obligation upon every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it. The order subsists until it is discharged.
24. I take into account the elements of contempt of Court including deliberate breach of clear lawful orders as set out in **Contempt in Modern New Zealand (2014) by New Zealand Law Commission.**

25. In the second application, the allegations therein are unsubstantiated and do not meet the threshold in **Mutitika and Hadkinson cases (supra)** on proof of contempt of Court therefore, the second application is unmeritorious.
26. Clearly, the issues in the application are highly contested and their determination in the suit on merits is called for. In the circumstances, interim preservation of the suit land would be necessary.
27. The Court is guided by the doctrine of Lis pendens which is meant to maintain status quo over a property in dispute until the suit is determined or terminated; see **Ogada-vs-Mollin (2009) eKLR**
28. Further, this Court is mandated under Section 13 (7) of the Environment and Land Court Act 2015 (2011) to grant interim preservation orders. The same include status quo order over the property in dispute.
29. To this end, the first application is partially merited and hereby partially allowed. The second application is devoid of merit and it is hereby dismissed.
30. Thus, the order merited in the first application is the status quo order given on 16th September 2025 modified to the effect that the same shall subsist pending the

hearing and determination of this suit. For the avoidance of doubt, the status quo prevailing over the suit land reference number NANDI/KEBULONIK/596 SHALL be maintained by the Plaintiff and the Defendants pending the outcome of this suit and in particular, the parties or their agents or servants shall not cause alienation or disposal of the suit land or any portion thereof, destruction of any property on the suit land or eviction of the parties from the suit land.

31. Costs of both applications to abide the outcome of the suit.
32. It is so ordered.

DATED and **DELIVERED** at **KAPSABET** this **20th** day of **January 2026**.

HON G M A ONGONDO
JUDGE

In the presence of; -

1. Mr K. Choge Learned Counsel for the Respondents
2. Walter Court Assistant

