REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELCL CASE NO. E012 OF 2025(OS)

ABDALLA ALI::1ST APPLICANT

JIMMY MWANZIA::2ND APPLICANT

BENSON MAINGI NZOMO::3RD APPLICANT

DERRECK MULUNGYE::4TH APPLICANT

CHAIRMAN, SECRETARY, ORGANIZING SECRETARY

AND MEMBERS OF KATANI PLAIN

SELF HELP GROUP::5TH APPLICANT

VERSUS

ABDULKARIM HASSAN KAKAA::::::::::::::::::::::::::1ST RESPONDENT

DAN OKELLO::2ND RESPONDENT

RULING

The application is dated 7th March 2025 and brought under Section 1A, 1B and 3A of the Civil Procedure Act, Cap 21, Order 40 Rule 1(a) (b) and Order 51 Rule 1 of the Civil Procedure Rules, 2010 seeking the following orders;

1. That this matter be certified urgent and heard *ex-parte* in the first instance.

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2. That the Honoruable Court be pleased to issue orders of injunction restraining the 1st and 2nd Respondents either by themselves, agents, employees and/or servants or anyone deriving authority from sub-dividing, alienating and or selling the property known as LR. No. 7283/16 without any authority of Katani Plain Self Help Group pending interparte hearing and determination of this application.
3. That the Honourable Court be pleased to issue orders of injunction restraining the 1st and 2nd Respondents either by themselves, agents, employees and/or servants or anyone deriving authority from sub-diving, alienating and/or selling the property known as LR. No. 7283/16 without any authority of Katani Plain Self Help Group pending interparte hearing and determination of this suit.
4. That the cost of this application be in the cause.

It is based on the annexed Supporting Affidavits of Abdalla Ali and Jimmy Mwanzia and grounds that the 1st and 2nd Respondents are in the process of sub-dividing, alienating and or selling the property known as LR. No. 7283/16 without any authority of Katani Plain Self Help Group, 5th Applicant. That the property known as LR. No. 7283/16 is registered in the name of Katani Plain Self Help Group, 5th Applicant. The Applicants and the 1st Respondent are members of Katani Plain Self Help Group whereas the 2nd Respondent is not a member of the group. The Applicants are therefore seeking for an order of injunction, restraining

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the 1st and 2nd Respondent either by themselves, agents, employees and/or servants or anyone deriving authority from sub-dividing, alienating and or selling the property known as LR. No. 7283/16 without any authority of Katani Plain Self Help Group, 5th Applicant.

This court has considered the application and the submissions therein. The Respondent submits that the Applicants have no *locus standi* to institute this suit.

In the case of Alfred Njau & Others vs City Council of Nairobi (1982) KAR 229, the court held as follows;

> *"The term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that the has no right to appear or be heard in such and such proceedings."*

Similarly, in the case of Law Society of Kenya vs Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000, the court held that;

> *"Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in court of law."*

In the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 Others, the court stated that while the court should not sanction hurdles to access to justice by restricting the definition of locus standi, it should nevertheless not entertain litigation that is hypothetical, abstract or is an abuse of the judicial process.

In the case of Alfred Njau & Others vs City Council of Nairobi (1982) KAR 229, the court held as follows;

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Similarly, in the case of Law Society of Kenya vs Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000, the court held that;

> *"Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in court of law."*

In the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 Others (Supra), the court stated that while the court should not sanction hurdles to access to justice by restricting the definition of locus standi, it should nevertheless not entertain litigation that is hypothetical, abstract or is an abuse of the judicial process.

Therefore, locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.

The 1st Respondent in his replying affidavit stated that he is the Chairman of the 5th Applicant and not the 1st Applicant. That the 2nd Applicant is the Treasurer and not

the Secretary as the Secretary is John Mark Ojiambo. None of the parties has produced any evidence to show the membership and the leadership of the 5th Applicant. No authority was produced by either party. I find that it is not possible at this stage to ascertain whether or not the applicants have locus standi or not. I find this objection must fail.

On the issue of temporary injunction are well settled and are set out in the judicial decision of Giella vs Cassman Brown (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of Nguruman Limited vs Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

> *"in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.*
>
> *These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially".*

Consequently, the Plaintiff ought to, first, establish a prima facie case. In Mrao Ltd vs First American Bank of Kenya Ltd (2003) EKLR the Court of Appeal gave a determination on a prima facie case. The court stated that;

> *"... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."*

In support of the application, the Applicants stated that the 1st and 2nd Respondents are in the process of sub-dividing, alienating and or selling the property known as LR. No. 7283/16 without any authority of Katani Plain Self Help Group, 5th Applicant. That the property known as LR. No. 7283/16 is registered in the name of Katani Plain Self Help Group, 5th Applicant.

Secondly, The Plaintiffs have to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR provides an explanation for what is meant by irreparable injury and it states;

> *"Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there*

is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

The Applicants stated that the 1st Respondent is a member of Katani Plain Self Help Group whereas the 2nd Respondent is not a member of the group.

Thirdly, the Plaintiffs have to demonstrate that the balance of convenience tilts in their favour. In the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) EKLR which defined the concept of balance of convenience as:

'The meaning of balance of convenience will favour of the Plaintiff' is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting".

The decision of Amir Suleiman vs Amboseli Resort Limited (2004) eKLR where the learned judge offered further elaboration on what is meant by "*balance of convenience*" and stated;

> *"The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice."*

The 1st Defendant/Respondent submitted that the Applicants have no mandate from the 5th Applicant to bring this suit. That they are guilty of nondisclosure of material facts. It is not clear to this court how the 2nd Respondent would be able to start subdivision of the suit land if he had no connection to the property and the leadership structure of the 5th Applicant is also not clear.

Bearing this in mind, I am convinced that there is a risk in granting orders of temporary injunction than not granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the current situation on the ground. I have also not had the opportunity to interrogate the annexures therein.

In Robert Mugo wa Karanja vs Ecobank (Kenya) Limited & Another (2019) eKLR where the court in deciding on an injunction application stated;

> "*circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any*

property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts..."

In view of the foregoing, I find that the application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF JANUARY 2026.

N.A. MATHEKA

JUDGE

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