



REPUBLIC OF KENYA



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**Chepkorir v Kurusoi & 24 others (Land Case E050 of 2025)  
[2026] KEELC 259 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 259 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
LAND CASE E050 OF 2025  
EM WASHE, J  
JANUARY 28, 2026**

**BETWEEN**

**MARY JECINTA CHEPKORIR ..... PLAINTIFF**

**AND**

**EDWIN KIBET KURUSOI ..... 1<sup>ST</sup> DEFENDANT**

**WILLIAM SEREM ..... 2<sup>ND</sup> DEFENDANT**

**DANIEL KIPTANUI ..... 3<sup>RD</sup> DEFENDANT**

**WILSON KOECH KORIR ..... 4<sup>TH</sup> DEFENDANT**

**JOHNSTONE MASAI ..... 5<sup>TH</sup> DEFENDANT**

**JAMES BARMASAI ..... 6<sup>TH</sup> DEFENDANT**

**JOSEPH ROTICH BIAMA ..... 7<sup>TH</sup> DEFENDANT**

**JULIAH K JEPKOECH ..... 8<sup>TH</sup> DEFENDANT**

**CHARLES KIBET KORIR ..... 9<sup>TH</sup> DEFENDANT**

**ROBERT KIBET KIPNGETICH ..... 10<sup>TH</sup> DEFENDANT**

**PHILLIP KIPRUTO BIRECH ..... 11<sup>TH</sup> DEFENDANT**

**CORNELIUS KIPKORIR ..... 12<sup>TH</sup> DEFENDANT**

**SYLVESTER KIPCHIRCHIR ..... 13<sup>TH</sup> DEFENDANT**

**TIMOTHY KIPLAGAT KIMAIYO ..... 14<sup>TH</sup> DEFENDANT**

**HENRY KIMELI ..... 15<sup>TH</sup> DEFENDANT**

**MARY NAKUTANGA CHELOTI ..... 16<sup>TH</sup> DEFENDANT**

**JACKLINE JERUTO MAIYO ..... 17<sup>TH</sup> DEFENDANT**



|  |                                  |
|--|----------------------------------|
| <b>JANE JEBET .....</b>                  | <b>18<sup>TH</sup> DEFENDANT</b> |
| <b>EDWIN K KIPLAGAT .....</b>            | <b>19<sup>TH</sup> DEFENDANT</b> |
| <b>JONATHAN NGETICH .....</b>            | <b>20<sup>TH</sup> DEFENDANT</b> |
| <b>ELPHAS KIPTOO MASAI .....</b>         | <b>21<sup>ST</sup> DEFENDANT</b> |
| <b>PAUL KEMBOI .....</b>                 | <b>22<sup>ND</sup> DEFENDANT</b> |
| <b>STELLA JEPKOECH .....</b>             | <b>23<sup>RD</sup> DEFENDANT</b> |
| <b>JONAH ARAP MUTAI ALIAS BABU .....</b> | <b>24<sup>TH</sup> DEFENDANT</b> |
| <b>KIMENGICH ARAP NGETICH .....</b>      | <b>25<sup>TH</sup> DEFENDANT</b> |

## RULING

1. The Plaintiff (hereinafter referred to as “the Applicant”) did file a Notice of Motion dated 11.06.2025 (hereinafter referred as “the present Application”) against the 1<sup>st</sup> to 25<sup>th</sup> Defendants (hereinafter referred to as “the Respondents”) seeking the following orders: -
  - a. That this Application be certified as urgent and be heard ex-parte in the first instance.
  - b. That an expedient hearing date and/or direction be given with respect to the hearing and determination of this Application.
  - c. That pending the hearing and determination of this suit, an Order of Injunction do issue restraining the Defendants/Respondents, their agents or servants from entering, remaining, occupying, trespassing, alienating or in any manner interfering with the Plaintiff’s quiet possession, ownership and use of the suit property known as L.R. No. 11235 situated in Uasin Gishu County.
  - d. That an Order of Injunction do issue restraining the Defendants/Respondents, their agents, servants from entering, remaining, occupying, trespassing, alienating, or in any manner interfering with the plaintiff’s quiet possession, ownership and use of the suit property known as L.R. No. 11235 situated in Uasin Gishu County.
  - e. That this Honourable Court be pleased to issue an Order directing the Water Resources Management Authority, North Rift Branch, to visit, inspect and file a Report on the suit property known as L.R. No. 11235 situated in Uasin Gishu County, being riparian land and to assist in ensuring compliance with all applicable environmental and water resource protection regulations and in safeguarding the integrity of the riparian zone from further unlawful encroachment or degradation by the respondents/defendants.
  - f. That this Honourable Court be pleased to issue an Order directing the Uasin Gishu Environment and Natural resources department, to visit, inspect and file a report on the suit property known as L.R. No. 11235 situated in Uasin Gishu County, being riparian land and to assist in ensuring compliance with all applicable environmental and water resource protection regulations and in safeguarding the integrity of the riparian zone from further unlawful encroachment or degradation by the Rrespondents/Ddefendants.



- g. That the Water Resources Management Authority (WARMA), North Rift Branch, Uasin Gishu Environment and Natural Resources department and the OCS Wanifour enforce the orders issued by this court.
  - h. That costs of this Application be provided for.
2. The grounds in support are premised in the body of the present Application as well as the Supporting Affidavit attached therein and can be summarised as follows; -
- i. The Applicant is the registered and absolute proprietor of the parcel of land known as L.R. No. 11235 measuring approximately 944 acres and situated in Uasin Gishu County (hereinafter referred to as “the suit property”).
  - ii. The Applicant did state that she has been in peaceful and uninterrupted possession of the suit land by undertaking agricultural activities including the cultivation of maize and other crops and which form a significant part of her livelihood and economic support.
  - iii. However, the Respondents herein, without any lawful justification, consent, or colour of right did unlawfully enter and trespass onto the suit property by forcefully tilling, occupying and/or undertaken activities on the suit property.
  - iv. The Applicant did state that despite the Respondents being issued with demand letters requesting them to vacate the suit property and/or yield vacant possession, the Respondents have blatantly ignored the same and instead escalated their activities on the suit property with arrogance.
  - v. It is therefore her claim that as a result of the Respondents continued trespass, destruction activities and interference with farm operations therein, she has incurred significant losses.
  - vi. The Applicant pleads that the Respondents interference and unlawful use of the suit property has resulted to interference of her legal rights hence a substantial loss of income thereof.
  - vii. The Applicant is of the view that the loss and/or damage occasioned by the Respondents on the suit property is one which is irreparable by way of damages.
  - viii. The Applicant did plead that being the registered owner of the suit property, the law recognizes her as the legitimate owner holding the legal rights to use and possess the suit property without any interruption by the Respondents herein.
  - ix. In essence, the Applicant sought this Court to grant a temporary injunction prohibiting the Respondents further use or continued occupation and unlawful acts/activities over the suit property.
  - x. In conclusion, she urged the court to allow the application and grant the orders sought.
3. The present Application was duly served on the Respondents herein.
4. The Respondents did oppose the present Application by filing two Replying Affidavits both dated 23.06.2025 sworn by the 2<sup>nd</sup> and 25<sup>th</sup> Respondents.
5. The facts relied upon by the 2<sup>nd</sup> and 25<sup>th</sup> Respondents in their Replying Affidavits can be summarised as follows; -
- i. The Respondents did plead that the suit property herein was originally registered in the name of Herman George Charles Klapprott.



- ii. During the ownership of Herman George Charles Klapprott and his family, the Respondents parents or grandparents were employees of the registered owner and had been given consent and/or permission to occupy and use various portions of the suit property.
  - iii. Later on in the year 1974, the family of Herman George Charles Klapprott decided to leave the Country and the 2<sup>nd</sup> Respondents together with other 21 persons did form a group known as Ngembasoo with an aim of acquiring the suit property.
  - iv. The Respondents did plead that an Application for consent to Sale and Transfer the suit property from the family of Herman George Charles Klapprott was made to the Uasin Gishu Land Control Board but there was no response made thereof.
  - v. The Respondents did disclose in their pleadings that the late President Daniel Toroitich Arap Moi requested the family of the Herman George Charles Klapprott to sell the suit property to one Laban Kiplagat Arap Kiptui who is the husband of the Plaintiff herein.
  - vi. As a result of the above actions by the late President Daniel Toroitich Arap Moi, the suit property was purchased and transferred to Laban Kiplagat Arap Kiptui on the 18.01.1975 and the Plaintiff is now a successor in title.
  - vii. The 2<sup>nd</sup> Respondents together with the other 22 members of Ngembasoo did register a caveat or restriction on the suit property on the 31.01.1975.
  - viii. The 2<sup>nd</sup> Respondent stated that the caveat and/or restriction which was registered on the 31.01.1975 was without following due process and notifying the Respondents removed on the 17.11.1976.
  - ix. The 1<sup>st</sup> Respondent did aver that the said Laban Kiplagat Arap Kiptui had issued notices to all residents of the farm sometimes on 10.05.1976 but maintained that none of them moved out of the farm.
  - x. On or about 07.08.1995, the Applicant did issue fresh eviction notices directing the Respondents herein to vacate and/or yield vacant possession of the suit property.
  - xi. The Respondents once again did not vacate the suit property and despite numerous efforts to amicably resolve the dispute of ownership, the same is still pending up to date.
  - xii. The Respondents were of the view that their occupation on the suit property has been since 18.01.1975 which is over 12 years.
  - xiii. The Respondents aver that their occupation on the suit property for the period of over 12 years has been through cultivation and construction of homes.
  - xiv. In essence, the Respondents did plead that the Applicants ownership of the various portions they occupy has been extinguished by the law of limitation.
  - xv. As such, this Court should make a declaration that the Respondents were the lawful owners of the various portions of land they are in occupation and have the same registered in their names.
  - xvi. In conclusion, the Respondents herein did submit that this Court do dismiss the present Application and allow the matter to proceed for full hearing.
6. The Replying Affidavit dated 23.06.2025 was duly served on the Applicant who elected not to file any Further Affidavit.



7. The Court then did direct that the present application would be canvassed by way of written submissions.
8. The Applicant did file her submissions dated 21.08.2025 together with authorities and the Respondents did also file their submissions dated 20.11.2025 thereafter.
9. The Court has indeed carefully considered the present Application, the Replying Affidavit thereof and the submissions by the parties and identifies the following issues for determination; -
  - Issue No 1- Has The Applicant Satisfied The Ingredients Of Granting An Order For Temporary Injunction?
  - Issue No. 2- Is The Present Application Merited Or Not?
  - Issue No. 3-who Shall Bear The Costs Of The Present Application?
10. The Court having identified the above-mentioned issues for determination, the same will now be discussed herein below.

**Issue No 1- Has The Applicant Satisfied The Ingredients Of Granting An Order For Temporary Injunction?**

11. The principles for consideration in an application for Injunctions was outlined in the case of Giella-versus- Cassman Brown & Co. Limited (1973) EA wherein the Court held 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.
12. This position was reiterated by the Court of Appeal in the case of Nguruman Limited-versus- Jan Bonde Nielsen & 2 Others (2014) eKLR where it was held that; -
 

“...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 stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”
13. Based on the authorities mentioned hereinabove, the three key ingredients in considering an Application for Temporary Injunction is the establishment of a Prima facie case, whether there is irreparable loss which is incapable of being compensated by damages and where the balance of convenience tilts.



14. As such, the Court will now proceed to discuss the three ingredients based on the facts pleaded by the parties herein.

### **Ingredient 1- Prima Facie Case**

15. The first ingredient for discussion is whether or not the Applicant has established a Prima Facie case against the Respondents.
16. The Court of Appeal in *Mrao Limited-versus- First American Bank Of Kenya & 2 Others* (2003) Klr 125 did describe 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.”
17. To begin with, the Applicant herein did plead that she is the registered owner of the suit property herein.
18. To support the above allegation, the Applicant did place before the Court the ownership documents in relation to the suit property.
19. The Applicant’s position is that as a registered owner of the suit property, the Respondents herein are strangers in the suit property without any lawful proprietary rights thereof.
20. The Respondents on the other hand admit that the Applicant herein is the registered owner of the suit property.
21. However, the Respondents were of the view that the Applicant’s registration and that of her husband was unlawful in view of the fact that it was recorded without complying with the law.
22. Secondly, the Respondents did plead that they had been in occupation of the suit property for over a period of 12 years and therefore the Applicants ownership rights over the portions on which they occupy had been extinguished through the *Limitation of Actions Act* and there were the legitimate owners of the said properties as sought in their Counter-Claim.
23. Looking at the two diverging pleadings, it is clear that there is a dispute as regards the ownership of the suit property as between the Applicant and the Respondents.
24. The Applicant’s pending suit is one that raises the issue of whether the Respondents ‘occupation and claim for ownership is legitimate or not.
25. This issue is one which requires the Respondents to rebut and/or respond to as they have done in the Defence and Counter-Claim filed herein.
26. As such, this Court is of the considered view and finding that the Applicant herein has established a prima facie case against the Respondents are required by law.

### **Ingredient 2- Irreparable Loss & Injury**

27. The second ingredient for discussion is whether the actions by the Respondents are those that cause irreparable loss and/or injury to the Applicant not capable of being compensated by damages.



28. In the Court of Appeal case of (Nguruman Limited -versus- Jan Bonde Nielsen & 2 Others) once Court did further describe irreparable loss and/or injury as follows;-

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. 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.”

29. In the present Application, the Applicant describes the suit property as her commercial property that she undertakes agricultural activities for her own survival and economic support.
30. The Applicant did complain that the unlawful entry, occupation and use of various portions of land by the Respondents did interfere with her livelihood and economic earning thereby resulting to irreparable loss and injury.
31. Further to the above, the Applicant did plead that the continued entry, occupation and use of various portions of the suit property by the Respondents did interfere with her ownership rights under the law without justification and therefore cause her irreparable loss and harm.
32. The Respondents on the other hand did not dispute that the Applicant herein undertakes farming activities on the suit property for her survival and economic needs.
33. The Respondents position was that they occupy various portions of the suit property based on their occupation since the year 1975.
34. The Respondents did further claim that their occupation on the suit property included undertaking farming activities aside from the homes they have established therein.
35. According to the pleadings filed by both parties, there is no dispute that the Applicant herein is engaged in large scale farming either on her own or through her agents, employees or servants.
36. There is also no doubt that the Applicant herein depends on the agricultural activities on the suit property for her survival and economic well-being.
37. This being the case, the Respondents occupation and use of the suit property definitely reduces and/or interferes with the Applicants use of the suit property.
38. The interruption and/or reduction of the available land for the Applicant to put in use for agriculture is one that results to irreparable losses and harm as the projected or anticipated yields would not be achieved or obtained.
39. Similarly, the Respondents herein although could be in occupation and/or use of various portions of the suit property, they did not disclose the portions of land they are cultivating and/or using apart from the structures that they have erected.
40. The ambiguity by the Respondents over the portions of land they claim to be in occupation and use of creates a mischief of the Respondents enlarging the portions they allege to own and use in



the Applicant's suit property thereby resulting to not only the loss in the revenue coming out of the agricultural activities but loss of more portions of land which is once again irreparable loss in the eyes of this court.

41. As such, this Court is of the view and finding that the Respondents occupation on the suit property is one that results to irreparable loss and harm to the Applicants herein.

### **Ingredient 3- Balance Of Convenience**

42. The last ingredient is that of balance of convenience.
43. Based on the findings in Ingredient No.1 and 2, the Court is of the finding that the balance of convenience tilts in favour of the Applicant herein.

### **Issue No. 2 – Whether The Application Is Merited**

44. In view of the findings made in Ingredient 1 to 3 hereinabove, the Court is satisfied that the present Application is merited and should be granted.
45. However, the Court is alive to the existence of the fact that the Respondents have various structures within the suit property.
46. This fact was duly pleaded by the Applicant herself as well as the Respondents.
47. Keeping in mind that the present Application is interlocutory in nature, it is the Court's view that the Respondents occupation and/or use should not be frustrated so that it renders their Counter-Claim nugatory.
48. As such, this Court is of the considered view and finding that the Respondents should retain and continue using the structures and/or houses that have been erected on the various portions of the suit property pending the hearing and determination of the main suit.

### **Issue No. 3 – Who Shall Bear The Costs Of The Application?**

49. On costs, the Court is of the considered view and finding that the same will abide the outcome of the main suit.

### **Conclusion**

50. In conclusion, the Court hereby makes the following Orders in determination of the present Application; -
- I. The Application Dated 11.06.2025 Is Partially Merited.
  - II. That An Order Of Injunction Be And Is Hereby Granted To The Applicant Against The Respondents Prohibiting Any Further Cultivation, Planting Of Crops, Cutting Trees, Construction Of Either Permanent And/or Temporary Houses And/or In Any Other Way Seeking To Improve Their Occupation On The Suit Property Known As Lr.no.11235 Pending The Hearing And Determination Of The Present Suit.
  - III. That The Applicant Herein Is Also Directed Not To Demolish, Remove And/or In Whatsoever Manner Interfere With The Structures Currently Erected And/or In Occupation Of The Respondents Pending The Hearing And Determination Of The Present Suit.



IV. For The Court To Appreciate The Issue Of Occupation On The Ground, The Deputy Registrar Of The Environment And Land Court, Eldoret Is Directed To Prepare For A Ground Visit By The Court Within 30 Days From The Date Of This Ruling.

V. The Costs Of The Present Application Shall Abide The Outcome Of The Main Suit.

**DATED, SIGNED AND DELIVERED IN ELDORET THIS 28<sup>TH</sup> DAY OF JANUARY, 2026.**

**EMMANUEL.M. WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Brian

Counsel for the Applicant: Mr. Okari

Counsel for the Respondent: Mr. Murgor

