



**Khasoha & 2 others v Nyokabi & 3 others; Wamunga & 4 others (Proposed Defendant)  
(Environment and Land Case E055 of 2021) [2026] KEELC 142 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 142 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE E055 OF 2021**

**CK YANO, J  
JANUARY 22, 2026**

**BETWEEN**

**VIOLET KHASOHA ..... 1<sup>ST</sup> PLAINTIFF  
Jael VUYANZI ..... 2<sup>ND</sup> PLAINTIFF  
JULIET SHIRWAZA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**MARY NYOKABI ..... 1<sup>ST</sup> DEFENDANT  
HELLEN MUSIMBI MUSIDIA ..... 2<sup>ND</sup> DEFENDANT  
BASILISA NYANGOR ..... 3<sup>RD</sup> DEFENDANT  
BENSON WAMBALE ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**ELPHAS SHIKUKU WAMUNGA ..... PROPOSED DEFENDANT  
CHRISTOPHER KOECH CHEROGON ..... PROPOSED DEFENDANT  
PAUL ASAI AKUFANA ..... PROPOSED DEFENDANT  
AMUKUNE KUBONDO ..... PROPOSED DEFENDANT  
THE LAND REGISTRAR UASIN GISHU COUNTY . PROPOSED DEFENDANT**

**RULING**

1. By a Notice of Motion Application dated 21<sup>st</sup> October, 2025, the Plaintiffs/ Applicants sought the following orders: -
  - a. Spent.



- b. That the Plaintiff be granted leave to amend her plaint to include additional parties as defendants namely;
    - i. Elphas Shikuku Wamunga
    - ii. Christopher Koech Cherogon
    - iii. Paul Asai Akufana
    - iv. Amukune Kubondo
    - v. Land Registrar Uasin Gishu County
  - c. That the draft amended plaint annexed hereto be deemed as duly filed and served upon payment of the requisite court fees.
  - d. That a temporary order of injunction do issue to restrain the defendants jointly and severally from transferring, leasing, selling property comprised in title numbers Soy/Soy Block 10 (Navillus) 950, Soy/Soy Block 10 (Navillus) 971, Soy/Soy Block 10 (Navillus) 962, Soy/Soy Block 10 (Navillus) 983, Soy/Soy Block 10 (Navillus) 989, Soy/Soy Block 10 (Navillus) 990, Soy/Soy Block 10 (Navillus) Msalaba 1387, Soy/Soy Block 10 (Navillus) 5416 and Soy/Soy Block 10 (Navillus) 1450 and/or doing any act that would frustrate the cause herein pending the hearing of this application interpartes and thereafter the suit.
  - e. That costs of this Application be in the cause.
2. The application is premised on the 6 grounds on the face thereof and supported by the Affidavit sworn by the 1<sup>st</sup> plaintiff on even date. She stated that she is one of the administrators of the estate of the late Nicholas Kiptum Musidia.
  3. She deponed that the present suit seeks among other orders, a declaration that the title deeds issued to the various defendants formed part of the estate of the deceased and further seeks an order for cancellation of the said titles, which she alleged were issued fraudulently.
  4. It is her claim that after filing the suit, she conducted an official search and it is only then that she discovered that some title deeds to the suit properties had passed to 3<sup>rd</sup> parties (listed as proposed defendants), who had not been included as parties in the present suit.
  5. She averred that she was not aware of the identities of the said 3<sup>rd</sup> parties/ proposed defendants at the time of filing the suit and maintained that their presence is necessary for the full and effective adjudication of the dispute.
  6. Further, it is her claim that she also discovered after being notified by the Land Registrar's office that there are serious attempts by the defendants to further transfer the subject titles by way of sale.
  7. Consequently, it is her contention that she has met the 3-limb test/requirement necessary for the court to grant the orders of injunction sought. She maintained that she has demonstrated serious triable issues which need to be interrogated, that she stands to suffer harm that may not be compensated adequately by damages and that the balance of convenience tilts in her favor to prevent her from suffering great injustice.
  8. In conclusion, she stated that the application had been filed in good faith and without undue delay and thus urged the court to allow the application and grant the orders sought.



9. The application was not opposed. Despite the defendants being served with the application and the requisite documents and an affidavit of service dated 06.11.2025 duly filed to that effect, on a perusal of both the court record and the online filing platform CTS, I have not seen any response to the application filed by the defendants. This court will therefore deem the application unopposed and the annexures thereto uncontroverted.
10. This court issued directions on the disposal of the application by way of written submissions on 19.11.2025. However, at the time of writing this ruling, on a perusal of the court record and the online filing platform CTS, none of the parties had filed their written submissions within the stipulated timelines. However, the plaintiffs filed submissions dated 12.1.2026 outside the time granted by the court and without leave. Be it as it may, I will proceed to render my decision as thereunder.

#### **Analysis and Determination:**

11. I have carefully considered the grounds in the application as well as the supporting affidavit and the annexures therein in totality. Consequently, it is my considered view that the following issues arise for determination: -
  - i. Whether the applicants have met the criteria for the grant of leave to amend the plaint.
  - ii. Whether the applicants have met the requirements for the grant of an order of temporary injunction.
  - iii. Who shall bear the costs of the application

#### **Whether the applicants have met the criteria for the grant of leave to amend the plaint;**

12. Order 8 Rule 3 of the Civil Procedure Rules provides for the amendment of pleadings with leave and states as follows: -

Order 8 rule 3 - Amendment of pleading with leave.

(1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings. (emphasis added)
13. The applicants herein have sought leave of the court to amend the plaint in order to include additional parties as defendants. It is their claim that at the time of filing the suit, they were not aware of the identity of the parties and only discovered the same upon conducting an official search of the suit properties. It is thus their contention that the presence of the said parties is necessary for the full and effective adjudication of the dispute.
14. Despite being served with the present application, the defendants/respondents did not file any response to the same.
15. I have carefully considered the grounds in the application and the reasons and/or explanation advanced by the applicants and the documents annexed to the supporting affidavit, which show that the proposed defendants are the registered proprietors of the properties known as Soy/ Soy Block 10 (Navillus)/1387 and 1450 and which form part of the dispute herein.
16. Further, from a look at the draft amended plaint, the same has only included the said additional proposed parties and outlined their proprietorship of the suit parcels No. 1387 and 1450 and has not introduced any new issue or cause of action that would be prejudicial to the defendants/respondents.



17. The general rule is that amendment should be allowed if it can be made without causing injustice to the other party. In view of the above, it is my considered opinion that there is need to include the proposed defendants as parties to this suit for the effective and complete adjudication of the dispute herein, to settle all the questions and further to grant them an opportunity to be heard before an adverse decision is made against them. The right to a fair hearing is the corner stone of the rule of law.

**Whether the applicants have met the requirements for the grant of an order of temporary injunction;**

18. The applicants in prayer no. (d) have sought the grant of an order of temporary injunction against the defendants, restraining them from transferring, leasing or selling the property comprised in Soy/Soy Block 10 (Navillus) 950, Soy/Soy Block 10 (Navillus) 971, Soy/Soy Block 10 (Navillus) 962, Soy/Soy Block 10 (Navillus) 983, Soy/Soy Block 10 (Navillus) 989, Soy/Soy Block 10 (Navillus) 990, Soy/Soy Block 10 (Navillus) Msalaba 1387, Soy/Soy Block 10 (Navillus) 5416 and Soy/Soy Block 10 (Navillus) 1450 or doing any act that would frustrate the cause.
19. Before delving into the merits of the injunctive orders sought and whether the applicants have met the standard for the grant of the same, I have noted that the said orders have been sought against all the defendants including the proposed defendants, who are the registered owners of the some of the properties listed above; to wit, Soy/ Soy Block 10 (Navillus)/1450 and 1387.
20. Despite the finding in issue no. (i) above allowing the applicants to amend the plaint and include the proposed defendants as parties in the instant suit, it is important to point out that the said proposed defendants have not been given an opportunity to respond to the application and thus, determining the same at this juncture would amount to condemning them unheard.
21. To this end therefore, it is my considered view that the prayer sought seeking to restrain the proposed defendants from transferring, leasing, selling the property contained in the parcels known as Soy/ Soy Block 10 (Navillus)/1450 and 1387 or doing any act that would frustrate the cause is untenable for the reason outlined herein above. Consequently, the same is declined as against the proposed defendants only and in respect to the 2 parcels of land namely Soy/ Soy Block 10 (Navillus)/1450 and 1387.
22. I will therefore proceed to determine the prayer on temporary injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants/respondents with regard to the remaining properties namely; Soy/Soy Block 10 (Navillus) 950, Soy/Soy Block 10 (Navillus) 971, Soy/Soy Block 10 (Navillus) 962, Soy/Soy Block 10 (Navillus) 983, Soy/Soy Block 10 (Navillus) 989, Soy/Soy Block 10 (Navillus) 990 and Soy/Soy Block 10 (Navillus) 5416 on merit.
23. Order 40 (1) (2) of the Civil Procedure Rules governs the grant of temporary injunction. Further, section 13 (7) (a) of the *Environment and Land Court Act*, 2015 also empowers this court to grant interim preservation orders including an interim order of injunction in the nature sought herein.
24. The principles governing the grant of temporary injunctions are now well settled. An applicant seeking orders of injunction is under a duty to satisfy the 3 principles set out in *Giella vs Cassman Brown and Co. Ltd [1973] EA. 358 at 360* where 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.”
25. These 3 principles are to be applied as separate, distinct and logical hurdles which an applicant is expected to prove sequentially. 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 Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86.
26. Further, the Court of Appeal in the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR) while addressing the need to surmount all the three conditions to warrant the grant of temporary injunction held as follows:-
- “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 is 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. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”
27. The first element is whether the applicants have established a prima facie case which raises arguable and triable issues with a probability of success. The Court of Appeal in Mrao Ltd vs. First American Bank of Kenya and 2 Others (2003) KLR 125 explained what amounts to a prima facie case and stated 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.”
28. The question that therefore follows is whether the applicants have established an arguable case and demonstrated that there exists a right which has been infringed by the 1<sup>st</sup> – 4<sup>th</sup> defendants/respondents to warrant the grant of the injunctive orders.
29. From a look at the application, supporting affidavit and the annexures therein, save for the copies of the official search in respect to parcel numbers 1450 and 1387, the applicants have not provided any documentary evidence to support their claims that the said properties formed part of the estate of the late Nicholas Kiptum Musidia or shown that the 1<sup>st</sup> – 4<sup>th</sup> defendants are the registered proprietors of the said parcels. There is also no evidence to support the allegation that there are attempts by the defendants to transfer the subject titles by way of sale or otherwise.
30. It is not enough for the applicants to merely state that they were notified by the Land Registrar’s office that there are serious attempts by the defendants to transfer the subject titles by way of sale. The onus is on the applicants to demonstrate these attempts to the required standard or that they stand to suffer harm without demonstrating the nature and the extent of the said injury. The claims by the applicants



thus amounts to unfounded fear and apprehension and is not sufficient proof of their alleged claims of sale or transfer.

31. Consequently, it is my considered opinion that the applicants have not satisfactorily proved and/ demonstrated the existence of a prima facie case to the required standard and to the satisfaction of this court.
32. As held in the Court of Appeal case of Nguruman above, where prima facie case is not established, then irreparable injury and balance of convenience need no consideration.
33. In conclusion therefore, it is the finding of this court that the applicants have not proved the requirements for the grant of the order of temporary injunction to the satisfaction of the court. Prayer no. (d) thus lacks merit and is hereby dismissed.

#### **Who shall bear the costs of the application?**

34. It is well settled that costs follow the event unless the court directs otherwise. However, given the nature of the application herein and the fact that the 1<sup>st</sup> – 4<sup>th</sup> defendants did not file any response to the application herein, I will direct each party to bear their own costs of the application.

#### **Conclusion:**

35. In view of the foregoing, it is the finding of this court that the Notice of Motion Application dated 21<sup>st</sup> October, 2025 is partially merited and is hereby allowed on the following terms:-
  - a. Leave be and is hereby granted to the plaintiffs/applicants to amend their plaint and include the proposed defendants as parties in the suit namely;
    - i. Elphas Shikuku Wamunga
    - ii. Christopher Koech Cherogon
    - iii. Paul Asai Akufana
    - iv. Amukune Kubondo
    - v. Land Registrar Uasin Gishu County
  - b. The plaintiffs/applicants be and are hereby directed to file and serve the amended plaint within 7 days from the date of this ruling.
  - c. A corresponding Leave be and is hereby granted to the defendants to amend their statement of defence within 14 days from the date of service if need be.
  - d. Prayer No. (d) on temporary injunction is dismissed.
  - e. Each party to bear their own costs of the application.
36. It is so ordered.

**DATED, SIGNED AND DELIVERED IN ELDORET THIS 22<sup>ND</sup> DAY OF JANUARY, 2026.**

**HON. C. K. YANO**

**ELC, JUDGE**

Ruling delivered in the presence of: -

Mr. Chemwok for the Plaintiffs.



Mrs. Chumba 1<sup>st</sup> Defendant & holding brief for Mr. Nyekwei for 2<sup>nd</sup> & 4<sup>th</sup> Defendants.

Court Assistant – Laban

