

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC NO. E003 OF 2022 (O.S)

**IRENE CHEPCHUMBA MUTAI
LYDIA CHERUTO
GLADYS CHELAGAT &
JULIET CHECHIRCHIR MUTAI-----
APPLICANTS**

VERSUS

**WILSON BARMAO MUTAI &
JAMES KIGEN ROTICH-----
RESPONDENTS**

RULING

1. The court, by an application dated **4/11/2025**, is asked to issue a temporary order of injunction, stopping the entry, cultivation, harvesting, alienation, construction, or any other interference by the respondents, on Title No. **Kitale Municipality Block 15/Koitogos/1495**, and to compel the respondents to pay general damages of **Kshs. 60,000/=**, the value of the harvested maize on the suit premises. The reasons are contained on the face of the application and in a supporting affidavit of Wilson Barmao Mutai, sworn on **4/11/2025**.

2. It is deposed that the applicant is the registered owner of the suit property, to which the 3rd and 4th respondents unlawfully made entry on **26/10/2025**, fenced off, and started harvesting the maize thereon. Copies of the identification card, green card, and photographs are attached as annexures marked **WBM-(1) -(3)**.
3. The applicant also deposes that he made a police report as per OB No. **8/27/10/2025** at Naisambu Police Station. The applicant deposes that the respondents have no justification to enter into the land, and such continuation of trespass would cause him loss and interference with quiet possession of the property.
4. The application is opposed through a replying affidavit of Gladys Chelagat, sworn on behalf of the respondents on **11/11/2025**. It is deposed that the court is *functus officio*, after a similar application dated **26/4/2022** was determined on **27/4/2022** with an order to maintain the status *quo*. The directions have not been challenged on appeal, review, or vacated to date. Annexed are copies of the authority to plead, the application dated **26/4/2022**, the response dated **9/5/2022**, and the court's directions marked **(A)**, **(B)**, and **(C)**, respectively.

5. The respondents term the application as frivolous, vexatious, unmerited, and based on falsehood or lies, as the respondents have been on the land since **26/4/2022**, where they have planted, tendered and harvested farm produce as of right.
6. A party seeking temporary orders of injunction must disclose a *prima facie* case, demonstrate irreparable loss or damage, and establish that the balance of convenience tilts in favour of granting the orders sought. See **Cheserem -vs- Immediate Media Services [2000] 2 EA 371.**
7. The role of the court in an application of this nature is to establish if the application has been brought within the law and its parameters. In **Nguruman Ltd -vs- Jan Bonde Nielsen & Others [2014] eKLR**, the court held that the principles of temporary injunction as set out in **Giella -vs- Cassman Brown [1973] EA 358** must apply distinctly and logically.
8. In **Mrao Ltd -vs- First American Bank (K) Ltd [2003] eKLR**, a *prima facie* case was defined as established where a right has been infringed to call a rebuttal from the opposite side. Irreparable loss or damage is loss that cannot be monetarily established. It must be real, apparent, and imminent. The balance of convenience to be

suffered by the applicant must be shown to be more, as compared to the respondent, if the injunction is granted and the suit ultimately dismissed. See **Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai [2018] eKLR.**

- 9.** A mandatory injunction, on the other hand, is rarely granted at the interlocutory stage unless there are exceptional circumstances, as held in **Kamau Mucuha -vs- Ripples Ltd [1993] eKLR** and in **Kenya Breweries Limited & another -vs- Washington O. Okeyo [2002] KECA 284 (KLR).**
- 10.** The respondents term the application as an abuse of the court process in view of similar applications and directions as per annexures **(A)**, **(B)**, and **(C)** to the replying affidavit sworn on **11/11/2025**.
- 11.** In the replying affidavit, sworn on **9/5/2022**, the respondent herein had admitted at paragraph **4** that the applicants herein are his children of his first wife. The court, by direction issued on **27/4/2022**, granted an order of status *quo*, which there is no evidence that the court has since vacated, varied, or reviewed.
- 12.** Status *quo* orders, once granted, are meant to preserve the existing state of affairs, as in place factually on the date of issuance, so that the substratum of the subject matter in dispute before it

is not eroded or radically changed to prejudice negatively any party to the suit. **Kenya Airline Pilots Association -vs- Co-operative Bank of (K) Ltd & Another [2020] eKLR**, in **Republic -vs- National Environment Tribunal Exparte Palm Homes Ltd & Another [2013] eKLR**, and **TSS Spinning & Weaving Co. Ltd -vs- NIC Bank Ltd & Another [2020] eKLR**.

13. In this application, the applicant is silent on the implications of the earlier orders of this court. A party seeking equitable remedies could make a full disclosure. Failure to do so deprives a party of the advantage of the orders. Misrepresentation or concealment of material facts is grave in such an application. See **Edward Karanja Ragui -vs- Barclays Bank of Kenya Ltd [2002] 1 [KLR] 647 & Coast Apparel Epz Limited -vs- Mtwapa Epz Limited & another [2017] KLR**.

14. In **Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Company Ltd & Others (2016) eKLR**, the court held that, where any doubt exists as to the applicants right or if the right is not disputed, but its violation is denied, the court in determining whether to issue a temporary injunction takes into consideration the balance of convenience to the parties and the nature of the injury which the

respondent is likely to suffer if the injunction is granted.

15. In the circumstances of this case, the court will look at the greater harm to the parties if the injunction is granted. The applicant does not dispute earlier orders of maintaining the status quo. Evidence of abuses of the said orders by the respondent is lacking. How the status quo has now changed since **11/5/2022** to the present, for the court to issue different orders or to vary them is not demonstrated.

16. The upshot is that I find the application lacking merit. It is dismissed with no order as to costs.

17. Orders accordingly.

Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 28th day of January 2026.

In the presence of:

Court Assistant - Dennis

Parties present

Bett for applicants - present

Oduor for respondents - present



HON. C.K. NZILI

JUDGE, ELC KITALE.

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