

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC CASE No. E059 OF 2025**

IAN KIPKOSGEI KEINO

PLAINTIFF/APPLICANT

VERSUS

UASIN GISHU COUNTY GOVERNOR...1ST
DEFENDANT/RESPONENT
SPEAKER, COUNTY ASSEMBLY
OF UASIN GISHU.....2ND
DEFENDANT/RESPONDENT

RULING:

1. This ruling is with respect to the Notice of Motion Application dated 13th June, 2025 in which the Plaintiff/Applicant herein seeks against the 1st and 2nd Defendants/Respondents the following orders:-
- (1) Spent
 - (2) Spent
 - (3) THAT pending the hearing and determination of this suit inter-partes; there be a temporary injunction restraining the 1st and 2nd Respondents, their servants, agents associates, employees and all other persons from trespassing, coming onto, or staying on the land, and from demolishing, constructing or altering any building or structures, houses or fences or in any way dealing with the Applicants property known as Eldoret Municipality Block 13/103 and Eldoret Municipality Block 13/100.
 - (4) A temporary order do and is hereby issued prohibiting the 1st and 2nd Respondents from making any entries on the

suit parcel of land being Eldoret Municipality Block 13/103 and Eldoret Municipality Block 13/100, summoning or in any way making decisions pending hearing and determination of this application and suit.

(5) Such and/or further order do issue to the interests of justice.

2. In support of the Motion, the Plaintiff filed a Supporting Affidavit sworn on 14th May, 2025. The Plaintiff deponed that the 1st and 2nd Defendants trespassed into and altered Eldoret Municipality Block 13/103 and Eldoret Municipality Block 13/100 (the suit properties herein) all the while claiming ownership thereto and with intent to dispossess him of the land. He deponed that he is the current occupant of Eldoret Municipality Block 13/100 having put up his home as well as enormous investments and developments. That he is also the current registered owner of Eldoret Municipality Block 13/103, which has been trespassed by the Defendants.
3. The Plaintiff averred that he purchased the land from Majorie Caroline Lloyd through her personal representative Edward Miles Fitzroy in 1992. That the land was transferred to the Plaintiff by the then Municipal Council of Eldoret and the Plaintiff has paid rates and rent for the same. That the Defendants have no authority and/or right to dispossess him of the land without a valid court order or as set out under law. Further, that in the interest of justice, none of the parties should take any steps that would prejudice the other party to allow for a proper and fair trial of the suit in court.

4. The Plaintiff averred that the court has a duty to safeguard the property and ensure proper administration of justice. He alleged that unless the orders sought are granted, the Defendants will take actions to prejudice him. The Plaintiff claimed that the orders will ensure that the status quo is maintained and that the parties are not intimidated but submit to the jurisdiction of the court. The Plaintiff asserted that he had brought the Application in the interests of justice to stop the Defendants' actions. He averred that none of the parties will be prejudiced by the grant of the orders sought.
5. The 1st and 2nd Defendants opposed the application through a Replying Affidavit sworn by Julius Koech, the 1st Defendant's Chief Officer of Lands and Physical Planning. He termed the application frivolous, vexatious, scandalous and an abuse of the court process. He deponed that the suit properties herein are leasehold and not freehold properties, and whose tenure was conditional. He claimed that the Plaintiff has no claim over the suit properties as they belong to the 1st Defendant. He accused the Plaintiff of attempting to encroach onto Government Land and using the court process to pursue his ill motives.
6. Mr. Koech deponed that the Applicant had not attached the lease for the said property to evidence ownership. That the Applicant had thereby conceded that he had never obtained title to the land since 1992 with no explanation given. He urged that public interest in the matter supersedes individual interest. He explained that the suit parcels have long housed government staff houses and the same is now being utilised as

speaker's residence. He thus asked that the application be dismissed with costs.

7. In response to the Replying Affidavit, the Plaintiff filed a further Affidavit dated 28th October, 2025 denying the averments therein in totality. The Plaintiff deponed that his application raises legitimate legal and factual issues requiring determination by this court. He averred that the nature of the titles, whether leasehold or not, is a determinant of ownership rights. He insisted that he has a genuine and justiciable interest in the said parcel arising out of ownership, possession and a purchase agreement, and thus he is a purchaser for value.
8. The Plaintiff deponed that he purchased the properties as evidenced by the sale agreement and ownership thereto was transferred as indicated in the letter dated 22nd February, 2002 with the knowledge of the District Land Officer and Commissioner of Lands. That the Defendants' claim to ownership is disputed and is at the core of the suit, thus the issue of title and ownership can only be determined upon hearing and consideration of the evidence. He accused the Defendants of attempting to dismiss the application without addressing the substantive issues raised, as well as derail the fair hearing of the matter. He asked the court to disregard the Defendants' allegations and allow the suit to proceed for full hearing on its merits.

Submissions:

9. The court directed that the Application be canvassed by way of Submissions. The Plaintiff's submissions in support of the

Application are dated 21st November, 2025. The Defendants equally filed their submissions opposing the Application dated 11th December, 2025.

The Plaintiff/Applicant's Submissions;

10. In the Plaintiff's Submissions, Counsel submitted that the Plaintiff resides on Eldoret Municipality Block 13/103 and has proprietary equitable interests in Eldoret Municipality Block 13/100 derived from the sale agreement and informal transfer. Counsel submitted that representatives of the Defendants raided the suit properties, demolished the fence and altered their boundaries. He submitted that unless restrained by an injunction and an eviction notice issued, the Defendants will continue construction and permanently alter the character of the land, as well as deprive the Plaintiff of his property.
11. Counsel urged that the damage caused cannot be adequately compensated by damages once a public building is completed. Counsel argued that the balance of convenience tilts in favour of the status quo. He further argued that the Plaintiff had demonstrated a lawful interest and possessory right over the suit property. Counsel cited Order 40 Rule 1 & 2, and relied on the cases of **Giella vs Cassman Brown & 2 Others (1973) EA 358** and **James Ndungu vs Reuben Mwangi Civil Case 184 of 2020**.
12. Counsel submitted that the Plaintiff was a bona fide purchaser for value and without notice, who obtained an indefeasible title that should be protected by law. Counsel argued that the Plaintiff acted honestly, without collusion or fraud, having

conducted due diligence, and had no knowledge of any prior interests on the suit land. Counsel submitted that the Defendants' may have illegally acquired title to the suit property, but that cannot disqualify the Applicant from being a bona fide purchaser. Counsel contended that the Plaintiff's interests are protected by Article 40 of the Constitution, and that the Defendants' failure and or refusal to effect a transfer cannot defeat the Plaintiff's equitable interests.

13. Counsel submitted that the Plaintiff had demonstrated that he is indeed a bona fide purchaser, and asked the court to uphold his property rights. He relied on the case of **Katende vs Haridar & company Ltd (2008)2 EA 173, Sehmi & Another vs Tarabana Company Limited & 5 Others (Petition E033 of 2023) (2025) KESC 21 (KLR), Kimathi & 6 Others (t/a Umoja Investors SHG) vs Maina t/a Geomath Management & 2 Others (Environment & Land Case 22 of 2022 (2024) KEELC 1381 (KLR) and Torinho Enterprises Limited vs Hon. Attorney General (Petition No. 5 (E006) of 2022 (2023) KESC (KLR).**
14. Counsel for the Plaintiff further submitted that the Defendants were paid the purchase price by the previous occupier who then sold to the Plaintiff. Counsel pointed out that the Defendants had not denied receiving the purchase price from the previous owner, thus they cannot be allowed to retain both the money and the land. Counsel added that under the Law of Contract Act, where a vendor refuses to complete performance, the purchaser may seek a refund of the purchase money paid.

15. Counsel cited the case of **Peter Mbiri Michuki vs Samuel Mugo Michuki (2014) KECA 342 (KLR)**. In conclusion, Counsel submitted that the Plaintiff had demonstrated a prima facie case with a high probability of success, that he stands to suffer loss and that the balance of convenience lies in his favour. Counsel asked that the orders sought in the Application be granted.

The Defendants/Respondents' Submissions;

16. On behalf of the Defendants, Counsel relied on the case of ***Giella vs Cassman Brown (supra)*** for the requirements required in an application for injunction. On the element of a prima facie case, Counsel for the Defendants cited ***Mrao vs First American Bank Limited & 2 Others (2003) KLR*** and submitted that the Plaintiff is in possession of public land, which does not belong to him. That the Plaintiff is infringing on the rights of the public, and for that reason he has not demonstrated a prima facie case. Counsel argued that since the Plaintiff is in possession of the land unprocedurally and unlawfully, the person to suffer irreparable loss is the public. That in the circumstances, the balance of convenience tilts in favour of the public who will suffer a great loss due to the Plaintiff's acts.

17. Counsel further reiterated that the suit properties are leasehold properties and not freehold. Further that Majorie Caroline Lloyd was a foreigner who could only hold land on leasehold tenure per Article 65(1)&(2) of the Constitution of Kenya, 2010. That the said Lease lapsed and the properties reverted back to the

government. Counsel urged that the Plaintiff had conceded that he had never been issued with title to the land since 1992 and cited Section 12(6) of the Land Act. Counsel argued that a former leaseholder has pre-emptive rights to renewal provided they comply with lease terms, but argued that the Plaintiff had failed to do so.

18. Counsel denied the Plaintiff's alleged ownership as the land has always housed government staff houses, and is currently being utilised as the Speaker's residence. Counsel submitted that the instant application is full of untruths. He explained that the Applicant's leasehold interest lawfully lapsed upon the expiry of the 99-year term. He asked the court to find that the Plaintiff's tenure was extinguished by operation of law and thus the claim before the Court is without merit. Counsel asked that the application be dismissed. Counsel cited **County Government of Kwale vs National Land Commission & 3 others; Mwangele & 450 Others.**

Analysis and Determination:

19. I have carefully considered the application, the rival affidavits alongside their respective annexures, the written submissions made by Counsel and authorities cited in support of the parties' respective positions. The issues arising for determination are:-
- (i) Whether the Plaintiff/Applicant has demonstrated that he is entitled to the injunction sought; and
 - (ii) Whether the temporary prohibition order sought should issue

(a) **Whether the Plaintiff Applicant has demonstrated that he is entitled to the injunction sought;**

20. The principles governing the grant of interlocutory injunctions are well settled. They were enunciated by the Court of Appeal in **Nguruman Limited vs Jan Bonde Nielsen & 2 Others CA No. 77 of 2012 (2014) eKLR**, and **Giella Vs. Cassman Brown (Supra)** where the Court stated:-

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages; and if the court is in doubt, then it can decide the application on a balance of convenience.”

21. The first limb for consideration is whether the Applicants have established a prima facie case with a probability of success. A prima facie case was defined in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others (2003) eKLR** 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.”

22. In support of the instant application, the Plaintiff has presented an Agreement for Sale showing that he purchased both Eldoret Municipality Block 13/103 and Eldoret Municipality Block 13/100. According to the Certificate of Lease produced by the Plaintiff over Eldoret Municipality Block 13/100, the Plaintiff was granted a 99 year lease over the said plot commencing on 1st October, 1909.
23. The Plaintiff claims that he is in occupation of plot No. 100, for which he obtained a Certificate of Lease, and has built his home on the said parcel. It can only be presumed that the Defendants are carrying out their activities on plot no 103 for which the Plaintiff never obtained title. The Plaintiff's claim over plot no. 103 is premised on the agreement for sale dated 27th April, 1994 through which he purchased the two plots from Edward Miles Fitzroy Lloyd, the personal representative of Marjorie Caroline Fitzroy. The Plaintiff annexed a letter dated 11th March, 1987 in which the Eldoret Municipal Council allowed the previous buyer to enter the land and undertake any permanent development as it pursued the matter of the title deed with the Commissioner of Lands.
24. Thereafter, the Plaintiff herein, alongside one Mrs. Phyllis C. Keino received a letter from the Eldoret Municipal Council dated 22nd February, 2002 confirming the sale of the parcel known as Eldoret Municipality Block 13/103 to Marjorie Lloyd. The letter also stated that particular monies paid through the District Commissioner would be factored in and directed them to put the boundary of the said plot in its rightful place.

25. The Defendants claim that the leasehold interest purchased by the Plaintiff over the suit properties lapsed. Going by the title to plot no. 100, the Plaintiff's interest thereon was a lease for the term of 99 years, commencing on 1st October, 1909. This term evidently lapsed on 30th September, 2008. I see no evidence to indicate that the said lease was renewed, but at the same time, there is no evidence to show that it was not. In addition, the Plaintiff claims that he has his home on the said plot and has annexed photographs to show that the land is indeed occupied.
26. With regards to plot no. 103, since no title has been issued yet, I cannot state with certainty whether the lease therein has lapsed. Put simply, without a Certificate of Lease, the particulars of the tenure to the Plaintiff and his predecessor in title cannot be ascertained, such as the term of the lease and its commencement date. That being the case, the Defendants' claim that the land reverted back to the Government at this stage cannot equally be ascertained. Consequently, the Plaintiff has established a prima facie case that he has an interest over the suit properties.
27. The second element is that the applicant must demonstrate that he stands to suffer irreparable harm. In **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] KEELC 2424 (KLR)**, the court explained the concept of irreparable harm as follows:-
- “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 defendant has been collecting rent since the year 2005 and therefore the issue of irreparable harm if injunction is not granted should not arise so long as the matter is fast-tracked for hearing.”

28. On irreparable harm, the Plaintiff claims that he has an interest over the suit properties capable of protection under Article 40 of the Constitution. He submitted that he stands to suffer irreparable loss incapable of being compensated by way of damages if the public building being erected on the land is completed. It was submitted on behalf of the Plaintiff the Defendants caused his fence to be demolished and altered the boundaries of the two plots. The Plaintiff thus claims that unless the injunction issue, the Defendants will continue construction and permanently alter the character of the land, as well as deprive the Plaintiff of his property.
29. The Defendants however claims that the Plaintiff stands to suffer no loss as the land he is claiming and illegally and unlawfully occupying is public land. In addition, the Defendants claim that it is the public that stands to suffer irreparable loss and not the Plaintiff. At this point, there has been no finding made that the suit properties are indeed public properties, this will be determined at the full hearing. As matters stand however, the Plaintiff still remains the owner of the land and in possession thereof. To that end, any continued construction will

indeed prejudice him if the land is found to belong to him in the end.

30. As to the balance of convenience, the Plaintiff annexed a photograph marked as IKK-1 showing signage to the effect that there is a proposed construction of the speaker's residence. The property is not being used to house the Speaker of the county as alleged, but is earmarked for development by the county, to put up the speaker's residence.
31. The Defendants must have had access or entered into the suit properties or at least a portion thereof if they are intent on undertaking the proposed construction. From the photographs seen by this court, it appears that apart from putting up the signage for the project and altering the boundary, the construction works have not properly commenced or at all.
32. Although the Plaintiff did not claim that the Defendants demolished the home he alleges to have put up on plot no. 100, no good will come out of public resources being expended towards construction of the speaker's residence on plot no. 100 whose ownership is being contested. Who will reimburse those funds if at the end of the hearing, the Plaintiff is found to be the legal owner of the land. It cannot therefore be in the interest of the public for the construction commenced on the suit land to continue before the issue of ownership is determined.
33. For that reason, the construction cannot be allowed to go on during the hearing of this case. Since the court has found that the Plaintiff holds interests over the suit properties, it is only fair that those interests be protected until such a time that he will be found to be illegally on the land or to otherwise be

disentitled to it. In the circumstances, I am inclined to grant the injunction sought herein pending hearing and determination of the suit.

(b) Whether the temporary prohibition order sought should issue

34. The Plaintiff also sought an order prohibiting the 1st and 2nd Defendants from making any entries on the suit parcel of land being Eldoret Municipality Block 13/103 and Eldoret Municipality Block 13/100, and to have them restrained from summoning or in any way making decisions pending hearing and determination of this application and suit. In **John Aboko Kumenda vs Chairman Mobamba Cooperative Society & 5 others (2021) KEELC 1404 (KLR)**, the court held that:-

“11. In his application, the Applicant seeks two orders; an order of prohibition and an order of injunction.

In the case of Kenya National Examination Council versus Republic ex part Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR, the Court of Appeal stated the grounds upon which an order of prohibition may issue as follows;

What does an ORDER OF PROHIBITION do and when will it issue" It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure

from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings - See HALSBURYS LAW OF ENGLAND, 4th Edition, and Vol.1 at pg. 37 paragraphs 128

12. From the above authority it is clear that Prohibitory orders are normally issued to a tribunal or public body to forbid it from continuing with proceeding in excess of its jurisdiction or in contravention of the law.”

35. The Plaintiff has brought the instant suit against the Defendants in their official capacities as the Uasin Gishu County Governor and the Speaker of Uasin Gishu County. As stated in the above-cited case, the aim of the prohibition is to prohibit the Defendants from making any entries regarding the suit properties or making any decisions thereon pending hearing and determination of the suit.

36. Under normal circumstances, an order of inhibition ought to have been sought. However, such an order would only apply where the land is registered. The unique position of this case is that one of the parcels appears not to be registered to any person or entity and its fate is entirely in the control of the Defendants herein. The Defendants have claimed that the lease lapsed, whereas the Plaintiff claims to be entitled to the land and that his interest is confirmed by the correspondence

admitting that money was paid for the land by his predecessor in title.

37. Nothing could stop the Defendants from going ahead to have the land registered and/or allocated to someone else or even procuring title in its name while the suit herein is pending. For that reason, I find that it is necessary that a temporary order do hereby issue prohibiting the Defendants from making any decisions on the suit property pending hearing and determination of this suit.

Orders:-

38. Consequently, the Plaintiff's application dated 13th June, 2025 partially succeeds as follows:-

(a) An order of temporary injunction do and is hereby issued pending the hearing and determination of this suit, restraining the 1st and 2nd Respondents, their servants, agents associates, employees and all other persons from trespassing, coming onto, or staying on the land, and from demolishing, constructing or altering any building or structures, houses or fences or in any way dealing with the Applicants property known as Eldoret Municipality Block 13/103 and Eldoret Municipality Block 13/100.

(b) A temporary order do and is hereby issued prohibiting the 1st and 2nd Respondents from making any entries on the suit parcel of land being Eldoret Municipality Block 13/103 and

Eldoret Municipality Block 13/100, summoning or in any way making decisions pending hearing and determination of this suit.

(c) Costs of this application shall be costs in the cause.

39. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **5TH** day of **FEBRUARY, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;
Ms. Koech for Respondents.
Mr. Angelei for Applicant.
Court Assistant - Laban.