

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC CASE NO. E090 OF 2025

JULIUS SAMOEI (Suing as an Administrator of the Estate of Kipkemei Samoei – Deceased)
PLAINTIFF/APPLICANT

VERSUS

HELLEN CHEBOLEM **1ST**
DEFENDANT/RESPONDENT
JEPKOSGEI KIBET **2ND**
DEFENDANT/RESPONDENT
MILTON KOECH **3RD**
DEFENDANT/RESPONDENT
AMBROSE KIMAMBEI KIMITEI...**4TH**
DEFENDANT/RESPONDENT
THE LAND REGISTRAR,
UASIN GISHU COUNTY**5TH**
DEFENDANT/RESPONDENT

RULING:

1. The Plaintiff/ Applicant herein filed a Notice of Motion Application dated 22nd September, 2025, seeking the following orders: -
 1. Spent.
 2. Spent.
 3. THAT pending the hearing and determination of the main suit, a temporary injunction do issue restraining the defendants, their servants, agents, employees or any person acting under their authority from any further dealings, transactions or interference with the plaintiff's

occupation, possession and proprietary interests in the suit property.

4. Spent.
 5. An order of registration of an Inhibition be and is hereby issued against the title to the suit property known as Uasin Gishu/Illula Settlement Scheme/313 and its subsequent subdivisions, namely Uasin Gishu/Illula Settlement Scheme/879, Uasin Gishu/Illula Settlement Scheme/880, Uasin Gishu/Illula Settlement Scheme/1966 and Uasin Gishu/Illula Settlement Scheme/1967 at the Lands Registry.
 6. An order directing the Officer Commanding Station (OCS), Eldoret Police Station to ensure compliance with the orders (2) and (3) of this Honourable Court.
 7. Costs of this application be provided for.
2. The application is premised on the 15 grounds on the face thereof and supported by the applicant's Affidavit sworn on even date. The applicant deponed that the deceased, KIPKEMOI SAMOEI, was the registered proprietor of **UASIN GISHU/ILLULA SETTLEMENT SCHEME/313** measuring approximately 4.1 Hectares which he was allotted in 1982. That the deceased died on 26.05.2005 and was buried on the suit property.
3. He further averred that he commenced succession proceedings after receiving a letter from the chief which is dated 6th November 2024 and that is when they discovered

issues of intermeddling and fraudulent activities being conducted on the suit land, which formed part of the estate of the deceased.

4. It is his claim that the defendants herein without any grant of representation and/or consent of the beneficiaries, unlawfully caused the transfer, sub division and registration of the original suit parcel into **UASIN GISHU/ILLULA SETTLEMENT SCHEME/879 and 880** respectively and further to **UASIN GISHU/ILLULA SETTLEMENT SCHEME/1966 and 1977** respectively.
5. He thus contends that the actions of the defendants' amount to intermeddling contrary to the provisions of section 45 of the Law of Succession Act as advised by his Advocates.
6. Further, he deponed that when he visited the county lands and adjudication office to inquire whether the proper procedure was used in the subdivision, transfer and subsequent registration of the original suit land No. 313, he was informed that the green card could not be issued as the mother title, No. 313, was suspect as the same ought to have been registered in the deceased's name first before anyone else and that could only be done after a certificate of confirmation of grant had been issued.
7. It is therefore his claim that if the orders sought herein are not issued, his family is at risk of being evicted from the suit parcel as the defendants/respondents are in the process of selling the suit parcel to other 3rd parties thus risking the total alienation of the estate unprocedurally.

8. The application was opposed. The 1st Defendant/respondent filed a replying affidavit dated 10th November 2025. She stated that she is the wife of the deceased and confirmed that the deceased was indeed the allottee of the original suit parcel No. 313.
9. She confirmed that there is an active succession case going on in court in respect to the estate of her deceased husband and the same was recently gazetted vide gazette notice no. 8987. That after the demise of her husband, she continued using the suit parcel and was not in a rush to institute any succession proceedings.
10. It was her claim that she only discovered that the suit land had been sub-divided and registered in the name of the 2nd Defendant/respondent herein when she went to conduct an official search of the suit property. She went further to explain that she had never transferred or sold the suit property to anyone and she was surprised by the outcomes of the search, which revealed various subdivisions and new registrations.
11. She contends that she was shocked to find out that there were consent forms allegedly signed by her, which she maintained were fraudulent as she has always used her fingerprint to sign her documents. She added that the fraud claims were reported to the DCI and she gave her statement on the same.
12. The 3rd defendant/respondent also filed his Replying affidavit in response to the application. He denied all the allegations

made in the present application and urged the court to dismiss the same.

13. It was his claim that he purchased a portion of the suit parcel **UASIN GISHU/ILLULA SETTLEMENT SCHEME/313** from the 1st defendant herein together with her children. That pursuant to the sale, the suit land which was registered in the name of the 1st defendant was subdivided and the said portion was hived off.
14. Further, it was his contention that a proper due diligence was done and they discovered that the original suit land No. 313 was closed on a sub division done on 19.01.2008 which gave rise to new parcel Nos. **UASIN GISHU/ILLULA SETTLEMENT SCHEME/879** and **880** respectively. The registry index map was duly amended on 24th December 2008 to reflect the sub division.
15. He deponed that the portion he purchased was a portion of **UASIN GISHU/ILLULA SETTLEMENT SCHEME/880** which was further subdivided and resulted to **UASIN GISHU/ILLULA SETTLEMENT SCHEME/1966** which was registered in his name and **UASIN GISHU/ILLULA SETTLEMENT SCHEME/1967** which to his knowledge is still registered in the name of the 1st defendant but was subsequently sub divided.
16. He maintained that due legal process was followed from the purchase of his portion of land, subdivision, transfer and registration in his favor and a Title issued thereto. He confirmed that the 1st defendant executed all the necessary

documents to facilitate the said registration. He added that pursuant to the said process, he has been in continuous occupation of his parcel from 2017 to date.

17. It is therefore his claim that he will be greatly prejudiced if the orders of injunction sought are granted as he has immensely developed his property and has built his family home thereon.
18. In conclusion, he reiterated that he legally acquired his portion of the suit property and thus urged the court to dismiss the application with costs.
19. The 4th defendant/respondent also opposed the application and filed a Replying Affidavit in response thereto. He stated that he had engaged the family on a sale agreement in respect to a portion of the suit land but which would only take place after conclusion of the succession case, but made payments towards the said purchase.
20. It was his claim that he later learnt that the property he had purchased was already subdivided and registered in other people's names including his ex-wife one JEPKOSGEI KIBET who is the 2nd defendant/respondent herein despite the fact that she did not pay anything towards the purchase of the same.
21. That consequently, he filed a case Civil Case No. E027 of 2022 and further put a restriction on the portion he had purchased, **UASIN GISHU/ILLULA SETTLEMENT SCHEME/879**. He however admitted that he was not sure whether the family had completed the succession matter.

22. This court issued directions on the disposal of the application by way of written submissions. Parties filed and exchanged their rival submissions which I have read and considered.

Analysis and Determination:

23. I have carefully considered the grounds in the application, the supporting affidavit and the annexures therein, the various responses by the respondents and the annexures thereto as well as the rival submissions in totality.

24. It is therefore my considered view that the following issues arise for determination: -

i. Whether the applicant has met the requirements for the grant of an order of temporary injunction.

ii. Who shall bear the costs of the application

Whether the applicant has met the requirements for the grant of an order of temporary injunction

25. The applicant in prayer no. (3) has sought the grant of an order of temporary injunction against the defendants, restraining them, their servants, agents, employees or any person acting under their authority from any further dealings, transactions or interference with the plaintiff's occupation, possession and proprietary interests in the suit property.

26. 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.
27. The principles governing the grant of temporary injunctions are now well settled. The same was set out in the case of **Giella vs Cassman Brown and Co. Ltd [1973] EA. 358 at 360** and has been reiterated in a number of cases over the years.
28. The Court of Appeal in the case of **Nguruman Limited vs. Jan Bonde Nielsen & 2 others [2014] eKLR** restated this position and held as follows:

“...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.”

29. It is however imperative to note that 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.**

Prima Facie Case:

30. The applicant is under a duty to demonstrate the existence of 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.”

31. The question that therefore follows is whether the applicant has established an arguable case and demonstrated that there exists a right which has been infringed by the defendants/respondents to warrant the grant of the injunctive orders.

32. From a look at the application, supporting affidavit and the annexures therein, it is evident that the original parcel of land was registered in the name of Kipkemoi Samoei, and who is since deceased. This fact was further supported by the 1st and 4th respondents in their respective replying affidavits.
33. The 1st respondent, who is the widow of the late Kipkemoi Samoei, confirmed that her late husband was the original allottee of the suit land No. 313. She denied the claim that she is the lawful registered owner of the suit property stating that the transfer and subdivision in her name were done fraudulently.
34. The 4th respondent on the other hand acknowledged that he was aware of the impending succession proceedings to be undertaken by the family in respect to the estate of the late Kipkemoi Samoei and it is only upon conclusion of the proceedings that they would be able to finalize the transaction.
35. The 3rd respondent on his part dismissed the claims that the suit property belonged to the late Kipkemoi Samoei. It is his claim that at the time of purchase, he did his due diligence, which revealed that the property was registered in the name of the 1st respondent. That all the dealings and transactions in respect of the sale were done with the 1st respondent in her personal capacity and not on behalf of the estate.
36. It is also common ground that the original suit land No. 313 has since been subdivided into several new parcel numbers,

transferred and registered in the names of defendants despite there not being a confirmed grant in respect to the estate of the late Kipkemoi Samoei.

37. The law of succession is clear that the estate of a deceased is vested in an administrator appointed as per the Act. From the circumstances herein, it is clear that the said subdivisions and resultant transfers and registrations are purported to have been done by the 1st defendant/respondent despite the fact that she is neither an administrator of the estate or a holder of a confirmed grant to give her the capacity to deal in the estate of the deceased. The 1st Defendant has denied having the land registered in her name and termed the sub-divisions and transfers fraudulent.
38. This court is mindful not to delve into the merits of the substantive issues at this stage. However, it is my finding that the applicant has demonstrated the existence of a prima facie case and the risk of the suit property being further alienated to the detriment of the estate of the deceased.
39. Consequently, I find that the applicant has established a prima facie case to the satisfaction of this court

Irreparable Loss and Injury;

40. The second element is that an applicant must demonstrate the irreparable loss and injury that he is likely to suffer that

cannot be adequately compensated by an award of damages unless an order of injunction is granted.

41. The onus is on the applicant to demonstrate the nature and extent of the irreparable loss and harm that he is likely to suffer if the order of injunction sought is not granted. This injury must be actual, substantial and demonstrable and not mere unfounded fears or apprehension.
42. In the Court of Appeal case of **Nguruman Limited v Jan Bonde Nielsen & 2 Others (supra)**, while defining what amounts to an irreparable injury, the court held 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.”

43. It is the applicant’s claim that the continued unprocedural alienation of the suit property without the proper and/requisite capacity amounts to interference and intermeddling with the estate of the deceased pending the conclusion of the succession proceedings in the High Court.
44. The orders have thus been sought to prevent further alienation of the suit property and ensure that the estate of the deceased is preserved as per the requirements of the law of succession.
45. The 1st respondent has supported these averments by disputing the claims that she is the lawful registered owner of the suit land and confirming that the same ought to vest in the name of her late husband.
46. The 3rd respondent on his part has maintained that he is the duly registered owner of the suit land and has been in occupation and use of the portion of the land from the year 2017 to date, having made substantial developments on the same.
47. I have carefully considered the rival positions taken by the parties herein and it is my considered opinion that the applicant, who is also duly appointed administrator in respect of the estate of Kipkemoi Samoei and his duty under

the Law of Succession Act is to preserve the estate of the deceased from wastage, has sufficiently demonstrated the irreparable loss and injury that the estate of the deceased is likely to suffer as a result of the continued alienation and intermeddling.

Balance of Convenience;

48. The final element is on the balance of convenience. On this element, the court is called upon to balance the hardship or inconvenience likely to be caused to the applicant by declining the injunction against the hardship or inconvenience likely to be caused to the respondents by granting the injunction.
49. In totality of the foregoing, it is my finding that the balance of convenience tilts in favor of the applicant in granting the orders of temporary injunction as sought.
50. The upshot of the above is that the plaintiff/applicant has sufficiently proved all the three elements/conditions required for the grant of an order of temporary injunction to the required standard.
51. However, this court duly notes that some of the defendants, in particular the 3rd defendant/respondent is in possession and occupation of a portion of the suit land and the effect of the injunctive orders may adversely affect him at this interim stage.
52. Consequently, this court finds that there is a need to issue an order of status quo for purposes of preserving the

existing state of affairs, in respect to the portion of land No. UASIN GISHU/ILLULA SETTLEMENT SCHEME/1966 occupied by the 3rd defendant/respondent.

53. In **TSS Spinning & Weaving; Company Ltd Vs Nic Bank Limited & another [2020] eKLR**, the Court unpacked the purpose of a status quo order as follows:

“In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention.”

Who shall bear the costs of the application;

54. It is well settled that costs follow the event unless the court directs otherwise.
55. In this case, having held that the applicant has sufficiently proved his application to the required standard, it is my finding that he is entitled to costs of the application.

CONCLUSION:

56. In view of the foregoing, it is the finding of this court that the Notice of Motion Application dated 22nd September, 2025 is **merited** and is hereby **allowed** on the following terms: -

- a) An Order of Temporary Injunction be and is hereby issued, restraining the 1st, 2nd, 4th and 5th defendants, their servants, agents, employees or any person acting under their authority from any further dealings, transactions or interference with the plaintiff's occupation, possession and proprietary interests in the suit property, pending the hearing and determination of the main suit.
- b) An order of registration of an Inhibition be and is hereby issued against the title to the suit property known as Uasin Gishu/Ilulula Settlement Scheme/313 and its subsequent subdivisions, namely Uasin Gishu/Ilulula Settlement Scheme/879, Uasin Gishu/Ilulula Settlement Scheme/880, Uasin Gishu/Ilulula Settlement Scheme/1966 and Uasin Gishu/Ilulula Settlement Scheme/967 at the Lands Registry.
- c) An order be and is hereby issued directing the Officer Commanding Station (OCS), Eldoret Police Station to ensure compliance with the orders (a) above.
- d) An order of status quo be and is hereby issued to preserve the state of affairs in respect to parcel of land known as Uasin Gishu/Ilulula Settlement Scheme/1966 as at the date of this ruling pending the hearing and determination of the suit.
- e) The 3rd respondent be and is hereby ordered/directed not to subdivide, sell, charge and/or alienate the said portion of the suit land known as Uasin Gishu/Ilulula

Settlement Scheme/1966 during the pendency of the suit.

f) Costs of the application to be borne by the defendants.

57. It is so ordered.

DATED, SIGNED and DELIVERED in ELDORET this 19th day of FEBRUARY, 2026.

**HON. C. K. YANO
JUDGE**

Ruling delivered in the presence of: -

Mr. Kimurgor for the Plaintiff/Applicant.

Ms. Ndambuki for the 1st Defendant.

Ms. Chirchir for 3rd Defendant/Respondent.

No appearance for 2nd, 4th & 5th Defendants/Respondents.

Court Assistant - Laban