



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIROMENT AND LAND COURT AT NAROK
ELCLC NO. E003 OF 2025

**PROF. SARONE OLE SENA &
29 OTHERS.....**
PLAINTIFFS/APPLICANTS

VERSUS

**ANTHONY CHERUIYOT
& 80 OTHERS**
1ST DEFENDANTS/RESPONDENTS

RULING

1. The Plaintiffs/Applicants herein brought this ***Notice of Motion Application*** dated ***11th February 2025***, under ***Rules 1, 20 and 22*** of the ***Practice Directions*** on proceedings in the ***Environment & Land Court***, sections ***1A, 1B, and 3A of the Civil Procedure Act and Orders 40 Rules 1 and 2, Order 5 Rule 17 and 51 Rule 1*** of the ***Civil Procedure Rules, 2010***, and sought for various injunctive orders against the Defendants/Respondents herein.

2. The prayers sought are;

i) That the Court issues orders restraining the Defendants, their agents, or servants from encroaching, cultivating, building on, interfering or in any manner whatsoever dealing with land parcels;

Cis-Mara/Ololulunga/19227, 19217, 19229, 19267, 19219, 19203, 19244, 19252, 19246, 190, 18669, 184, 19245, 19216, 21128, 178, 19272, 19273, 19268, 19223, 20172, 183, 19220, 19260, 19226, 20173, 19208, 19269, 19197, 19204, 19201, 19210, 19264, 19248, and 19206, pending the hearing and determination of this application and suit herein.

ii) That leave be granted to the Plaintiffs/Applicants to effect service upon the Defendants/Respondents by way of substituted service through 2 Newspapers of nationwide circulation.

iii) That the costs of the application be provided for.

3. This Application is premised on various grounds as enumerated on its face, and on the Supporting affidavit of **Prof. Sarone Ole Sena**, 1st Plaintiff/Applicant herein who swore the said Affidavit on his behalf and on behalf of his Co-Plaintiffs/Applicants.

4. The Plaintiffs/Applicants averred that they are the registered proprietors of all land parcels Nos. ***Cis-Mara/Ololulunga/19227, 19217, 19229, 19267, 19219, 19203, 19244, 19252, 19246, 190, 18669, 184, 19245, 19216, 21128, 178, 19272, 19273, 19268, 19223, 20172, 183, 19220, 19260, 19226, 20173, 19208, 19269, 19197, 19204, 19201, 19210, 19264, 19248 and 19206***, within **Narok County**, hence seeking court intervention to address the

Defendants/Respondents' illegal trespass and encroachment on their properties.

5. The Plaintiffs/Applicants stated that the dispute originated in **2006**, between **Mbokishi Group Ranch**, being proprietors of **Cis-Mara/Ololulunga/113**(now subdivided) and neighbouring dissolved Group Ranches, **Ololoipangi Group Ranch** and **Oloisuisho Group Ranch**, who constitute the Defendants herein, leading to a ruling by the **Ololulunga Land Dispute Tribunal** in favour of **Mbokishi Group Ranch**.
6. The Plaintiffs/Applicants further averred that the Tribunal's decision was adopted as a court decree on **5th February 2009**, in **Narok CMC Misc. Land Case No. 17 of 2006**, which the Defendants/Applicants unsuccessfully challenged in **Nakuru HC Petition No. 8 of 2011** and **Nyeri Court Appeal No.179 of 2014**. The Plaintiffs/Applicants also averred that in furtherance of the execution of the Decree, a **re-survey** conducted in **2020**, confirmed the Defendants'/ Respondents encroachment.
7. The Plaintiffs/Applicants also deponed that despite multiple notices to vacate, the Defendants/Respondents have refused to comply, causing irreparable harm to the Plaintiffs/Applicants herein.
8. The application is opposed by **3rd, 13th, 14th, 15th, 16th, 17th, 18th, 25th, 26th, 46th, 47th, 52nd, 53rd and 54th** Defendants/Respondents herein vide their Replying Affidavit dated **7th May 2025**, sworn by **Paul Mutai**, the **13th**

Defendant/Respondent. It was his averment that the Plaintiffs'/Applicants application for a **temporary injunction** is **baseless, misconceived, lacks merit,** and constitutes **an abuse of the court process,** urging the court to strike it out with costs.

9. The Respondents also averred that the above Defendants/Respondents and others not named in the suit have been in **possession** of the disputed parcel of land since **1990**, initially welcomed by members of **Olosuisho** and later confirmed by **Prof. Sarone Ole Sena** as occupying his land, **Narok/Cis-Mara/Ololulunga/114.**

10. The Defendants/Respondents claimed that they are members of the **Tachasis Progressive Group**, which was registered with the intent of purchasing the land from **Prof. Sarone Ole Sena.** Correspondence between the said Group and **Prof. Sena** indicated his acknowledgment of their **occupation** and **intention** to sell the land to them, though the transaction did not materialize.

11. The Defendants/Respondents further contended that sometimes in **August 2020**, a Land Surveyor, implementing a court decree from **Narok CM Misc. Application No. 17 of 2006**, surveyed the **Mbokishi Group Ranch** land, measuring **607 hectares** leading to the shifting of Land Parcel No. **Narok/Cis-Mara/Ololulunga/114**, and creating an extra **3,500 acres** of land.

12. The deponent further averred that **Mbokishi Group Ranch, the** owner of Land parcel No. **Narok/Cis-Mara/113**, allegedly subdivided this extra land **unlawfully**, which parcel of land was in occupation of the Defendants/Respondents, and issued new titles to its members. Further, that this unlawful action gave rise to titles **No. Cis-Mara/Ololulunga/20172, 20173, 19244. 19241, 19229, 19260, 19252 and 19247** among others.
13. The Defendants/Respondents argued that they have been in **peaceful, uninterrupted possession and occupation** of the suit property for over **30 years, building permanent structures, planting trees, and farming** on the land. Further, it was their claim that their possession has been **open, continuous, and exclusive, without force, secrecy, or permission** from the landowner.
14. They also contended that the Plaintiffs/Applicants have never been in possession of the extra acres, and that the subdivision of the extra **3,500 acres** does not affect their possession of the land. The Respondents also contended that granting the injunction sought would effectively evict them from their homes, causing irreparable harm that cannot be compensated by damages.
15. Therefore, the referred Defendants/Respondents urged the court to dismiss the instant application with costs, emphasizing that their long-standing possession and occupation of the suit land, and the lack of any prior action by the Plaintiffs/Applicants to claim possession over the past 30 years, militates against the Plaintiffs/Applicants claim.

16. The application is also vehemently opposed by the **5th, 6th, 8th, 9th, 12th, 30th, 31st, 32nd, 35th, 36th, 37th, 39th, 40th, 41st, 46th, 56th, 68th, 69th, 70th, 72nd, 73rd and 74th** Defendants/Respondents, vide a Replying Affidavit sworn on **26th May 2025**, by **Nkutukai Leboo - 7th Defendant/respondent** on his own behalf and on behalf of other Defendants/Respondents.
17. The above Defendants/Respondents challenged the Plaintiffs/Applicants' Notice of Motion dated **11th February 2025**, terming it **misplaced, vexatious**, and filled with untrue allegations. **Nkutukai Leboo** asserted that he is the registered owner of land parcel No. **CIS-MARA/OLOLULUNGA/6071**, measuring **22.68 hectares**, which he acquired from **Ololoipangi Group Ranch** in **1997**, and has occupied exclusively since **1998**.
18. It was his contention that the other Defendants/Respondents, including the **31st, 32nd, 36th, 68th, and 77th**, are legitimate owners of their respective parcels of land which were allocated by **Ololoipangi Group Ranch** in 1997, and have been in exclusive occupation since then.
19. The deponent further contended that the **29th and 77th** Defendants/Respondents are deceased, rendering any suit against them **null and void**. He alleged that the Plaintiffs/Applicants have never occupied the parcels of land in question, and that their claims are deemed malicious and baseless.

20. The deponent also averred that the title deeds of the Defendants/Respondents are **valid, unimpeached**, and were issued prior to those of the Plaintiffs/Applicants, confirming that their ownership was the priority. The 7th Defendant/Respondent urged the court to dismiss the Plaintiffs/Applicants' application with costs.
21. The Plaintiffs/Applicants filed a Further Affidavit dated **15th July 2025**, in response to the two Replying Affidavits sworn on **7th May 2025** and **26th May 2025** respectively. The deponent, **Prof Sarone Ole Sena**, reiterated the content of the Supporting Affidavit sworn on **11th February 2025**, and maintained that the Defendants/Respondents have **illegally trespassed** onto the Plaintiffs/Applicants' parcels of land.
22. He deposed that the dispute was settled in **Ololulunga Divisional Land Disputes Tribunal Case No. 14 of 2006**, which decision was adopted as a Decree in **Narok Principal Magistrate Court Misc Land Case No. 17 of 2006**, and later affirmed in **Nyeri Court of Appeal Civil Appeal No. 179 of 2014**, vide a judgment delivered on **27th September 2017**.
23. Further, that the Defendants/Respondents have encroached onto land parcels which arose from the subdivision of **NAROK/CIS-MARA/OLULUNGA/113 and NAROK/CIS-MARA/OLULUNGA/114**, as shown in the **Registry Index Map** annexed. He argued that the **3rd, 13th, 14th, 15th, 16th, 17th**,

18th, 25th, 26th, 46th, 47th, 52nd, 53rd and 54th Defendants'/Respondents claim of **peaceful, uninterrupted possession** is termed as baseless in view of the previous litigation and court decisions.

24. The deponent deposed that the **Land Disputes Tribunal** had decreed that the **District Registrar and Surveyor**, do **re-survey Imbokishi Group Ranch** comprising **607 hectares** and place **beacons**, and that any title deed obtained **fraudulently** within the Ranch be cancelled. He claimed that this decision was implemented as per the Report dated **12th November 2020**, and the Defendants/Respondents have not challenged its implementation.
25. The Plaintiffs/Applicants denied that the said Defendants/Respondents occupy land parcel **No. NAROK/CIS-MARA/OLULUNGA/114**, and stated that the titles they refer to as **Cis/Mara/Ololulunga/20172, 20173, 19244, 19241, 19229, 19260, 19252 and 19247**, arose from the subdivision of parcel **No. NAROK/CIS-MARA/OLULUNGA/113**, and not his parcel.
26. The Plaintiffs/Applicants further contended that the Defendants/Respondents have not, on a balance of probability, made a case to warrant the Court's discretion in their favour. The **Registry Index Map** is said to confirm that the titles mentioned in the Replying Affidavit sworn on **26th May 2025**, are distinct from the Plaintiffs'/Applicants parcels of land.

27. Further, the Plaintiffs/Applicants maintained that they hold **lawful and legitimate proprietary rights** over the subject parcels of land, and that the Defendants/Respondents have not proved ownership of the land claimed. Therefore, the Plaintiffs/Applicants prayed that the instant Application dated **11th February 2025**, be allowed as prayed.

28. This application was canvassed by way of written submissions. In compliance thereto, the Plaintiffs/Applicants filed their written submissions dated **26th January 2026**, through **Morris Maina & Co Advocates**, wherein they raised the following issues for determination;

- i) Whether the Plaintiffs/Applicants' application has a prima facie case with a probability of success?**
- ii) Whether the Plaintiffs/Applicants stand to suffer irreparable damages?**
- iii) Whether the balance of convenience is in favour of the Plaintiffs/Applicants?**
- iv) Who bears the costs.**

29. On whether the Plaintiffs/Applicants' application has **a prima facie case** with a probability of success, the applicants relied on the case of **Nguruman Limited vs Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)**, and submitted that at all the material times, they are the registered proprietors of the subject

parcels of land having been issued with title deeds, a fact that has not been disputed by the Defendants/Respondents.

30. The Plaintiffs/Applicants further submitted that the Defendants/Respondents **illegally trespassed** unto the said parcels of land and various demand notices to vacate from the Plaintiffs/Applicants' parcels of land remained unheeded. Further, that the Defendants/Respondents have **unlawfully interfered** with the Plaintiffs/Applicants registered rights which are protected under **Article 40** of the **Constitution** and **Section 24** and **25** of the **Land Registration Act**.
31. For the above submissions, **reliance** was sought in the cases of **Mrao Ltd. Vs First American Bank of Kenya Ltd & 2 others [2023]KLR 125** and **Cyo Investment Limited vs Suntrek Investments Limited (Land Case E328 of 2025) [2025] KEEL 8506 (KLR)(4)**, wherein the court held that; *on the material before me, I am satisfied that the plaintiff has established a **prima facie case** as contemplated in Giella . Thus, satisfied on the first limb.*
32. On whether the Plaintiffs/Applicants stand to **suffer irreparable damage** the Plaintiffs/Applicants relied on **Order 40 of the Civil Procedure Rules** and in the case of **Chepkwony vs Sang (ELC E054 of 2025)[2025] KEELC 7860 (KLR)**, where the court held; *the object of interlocutory injunction is to protect the plaintiff against injury by violation of his legal right for which he could be adequately compensated in*

damages recoverable in the action if the matters in dispute were resolved in his favour at the trial”

33. The Plaintiffs/ Applicants further submitted that the actions of the Defendants/Respondents of continued occupation on the suit land is **unlawful**, to the Plaintiffs/Applicants as it deprives them of their **use, enjoyment and possession** of **their properties**, and which is **wasting** away the suit parcels, thus causing the Plaintiffs/Applicants irreparable harm, loss and prejudice.
34. On whether the **balance of convenience** is in favour of the Plaintiffs/Applicants, it was their submissions that the Plaintiffs/Applicants being the registered proprietors of the suit land, the balance of convenience tilts in their favour, which is preserving the suit land, so as to prevent the land from **wasting** and/or any party suffering prejudice.
35. It was the Plaintiffs/Applicants further submissions that the Defendants/Respondents have **no proprietary rights**, and therefore they stand to suffer no harm. Reliance was sought in the case of **Nguruman Limited vs Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)**.
36. In awarding the costs, the Plaintiffs/Applicants invited the court to be guided by the provisions of **Section 27(1)** of the **Civil Procedure Act Cap 21**, and also relied on the case of **Jasbir**

Singh Rai & 3 others vs Tarlochan Singh Rai & 4 others [2014]EKLR.

37. The **3rd, 13th, 14th, 15th, 16th, 17th, 18th, 25th, 26th, 46th, 47th, 52nd, 53rd, and 54th**, filed their written submissions **dated 9th July, 2025** through **GKL Advocate LLP**, and raised the following issues for determination;

i) Whether the application for temporary injunction pending the hearing and determination of the main suit is merited.

ii) Who shall bear the costs of the application?

38. **On whether the application for temporary injunction pending the hearing and determination of the main suit is merited**, the above Defendants/Respondents relied on **Order 40 Rule 1** of the **Civil Procedure Rules**, and the principles as set in the case of **Giella vs Cassman Brown & Company Limited [1973] EA** in granting order of temporary injunction and sub-divided the above issue into three as follows;

i) Whether the Plaintiff/Applicant has demonstrated a prima facie case against the Defendant/Respondent.

ii) Whether the applicant will suffer any irreparable injury in the event the injunctive reliefs sought are not granted.

iii) Where does the balance of convenience lie?

39. On whether the Plaintiffs/Applicants have demonstrated a prima facie case against the Defendants/Respondents, they submitted that the Plaintiffs/Applicants claim is **farfetched**, and a fruit of **misinterpretation** and **greed** because the Plaintiffs/Applicants have not clearly explained or established how they acquired the cited parcels of lands known as **Cis-Mara/Ololulunga/20172, 20173, 19244, 19241, 19229, 19260, 19252 and 19247**.

40. On whether the plaintiffs/ applicants will **suffer any irreparable injury** in the event the injunctive reliefs sought are not granted, the above Defendants/Respondents submitted that the Plaintiffs/ Applicants have never been **in occupation** of the suit properties, and they have only made claims over the years that have since not amounted to much, except constant and unnecessary aggravation of the Defendants/Respondents , but **the 3rd, 13th, 14th, 15th, 16th, 17th, 18th, 25th, 26th, 46th, 47th, 52nd, 53rd and 54th Defendants /Respondents** have been in occupation of the properties known as **Cis-Mara/Ololulunga/20172, 20173, 19244, 19241, 19229, 19260, 19252 and 19247** since **1990**, and have made costly developments, including long standing trees, general farming and homesteading.

41. For this submissions, reliance was sought in the case of **Pius Kipchirchir Kogo vs Frank KimeliTengi (2018) EKLR**, where the court held;

“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”

42. The Defendants/Respondents further submitted that the balance of convenience undoubtedly lies in their favour, since they have been in the suit properties since **1990**, and have been in **actual possession and occupation** since then. Further, that if the injunction sought is granted the Defendants/Respondents will be forced to leave the suit properties, places where their families have called home for almost three decades.
43. On the issue of costs, the said Defendants/Respondents submitted that the costs of this application should be borne by the Plaintiffs/Applicants herein.
44. The **5th, 6th, 7th, 8th, 9th, 12th, 30th, 31st, 32nd, 35th, 36th, 37th, 39th, 40th, 41st, 46th, 56th, 68th, 69th, 70th, 72nd, 73rd, and 74th**, Defendants/Respondents also filed their written submission dated **22nd January 2026** through **Cheruto & Co advocates**, wherein they raised the following issues for determination;
- i) Whether the principles for granting an order of temporary injunction have been met by the Plaintiffs/Applicants.***

ii) Whether the application should be dismissed with costs.

45. **On whether the principles for granting an Order of temporary injunction have been met by the Plaintiffs/Applicants**, these Defendants/ Respondents relied on the principles that were set out in the case of **Giella vs Cassman Brown & Co. Ltd [1973 EA 358]** being;

- i) the applicants must show that they have a prima facie case with probability of success;**
- ii) the applicants must demonstrate that if an order of injunction is not granted, they will stand to suffer irreparable injury;**
- iii) that when the court is in doubt, to determine the application on a balance of convenience.**

46. On the **prima facie case**, reliance was sought in the case of **Mrao vs First American Bank of Kenya Ltd & 2 others [2003]eklr.** Further, these Defendants/Respondents submitted that as **5th, 6th, 7th, 8th, 9th, 12th, 30th, 31st, 32nd, 35th, 36th, 37th, 39th, 40th, 41st, 46th, 56th, 68th, 69th, 70th, 72nd, 73rd, and 74th**, they have all occupied their respective parcels of land, separate from the Plaintiffs/Applicants, and that none of them have encroached onto the Plaintiffs/Applicants parcels of land, and there is no evidence linking them to the encroachment.

47. **On whether the Applicants stand to suffer irreparable loss**, these Defendants/Respondents relied on **Halsbury's**

Law of England, 3rd Edition, to define **irreparable injury** and also relied on **Section 107** of the **Evidence Act**, on the fact that “ *he who alleges must prove.*” It was their submissions that since the Plaintiffs/Applicants alleged, they needed to avail proof to support their allegations.

48. Further, the said Defendants/Respondents submitted that the Plaintiffs/Applicants have **not demonstrated** through evidence of any encroachment unto their parcels of land by Defendants/ Respondents, and extent of their suffering if any, and why the said injury if any, cannot be compensated by an award of damages.
49. On the issue of costs, these Defendants/Respondents submitted that since the Plaintiffs/Applicants is a candidate for dismissal, then the court should use its discretion as provided by **section 27** of the **Civil Procedure Act**, and award them costs of this application.
50. In conclusion, these Defendants/Respondents submitted that the Plaintiffs/ Applicants have failed to meet the threshold for grant of temporary injunction, and they are thus not deserving of the orders sought.
51. The above are the grounds for and against the instant Application for temporary injunction, which has been brought by the Plaintiffs/Applicants under **Order 40 Rule 1& 2** of the **Civil**

Procedure Rules, which this court has carefully considered together with the rival written submissions, cited authorities and relevant provisions of law and finds as follows;

52. It is evident that under the above provisions of law(Order 40 rule 1), where any applicant can demonstrate that any property in dispute is in **danger** of being **wasted, damaged, or alienated** by any party to the suit, then the court may grant temporary injunction **to restrain** such act or make orders for purposes of **staying, preventing** the **wasting ,damaging alienating , sale or disposition** of such property.
53. The law is therefore clear that the applicant for temporary Injunction must establish through affidavit evidence that the property in dispute is in danger of being **wasted, damaged** and/or **alienated**, for the court to issue such temporary injunction.
54. The Plaintiffs/Applicants herein are the ones who has alleged and the onus is upon them to call such sufficient evidence to prove that the alleged suit properties are in dispute, and there is such danger as provided by **Order 40** of the Civil Procedure Rules referred above.
55. It is clear that a temporary or interlocutory injunction as the one sought herein is a Court order issued either under **Section 63 of the Civil Procedure Act** and **Order 40** of the **Civil Procedure Rules**, that **preserves** the **status quo** by

restraining a party from taking specific actions until a case filed in court is fully heard and decided. It is granted to prevent **irreparable injury** or **waste** of property, ensuring the court's final judgment is not rendered meaningless. See the case of ***Mateli v Kieti [2023] KEMC 289 (KLR)***

56. It is also trite that the purpose of temporary injunction is to prevent the Defendant/Respondent from **damaging, alienating, or disposing** of property while the matter in dispute is still ongoing in court. See the case of ***Nduati & 2 Others Vs. Chemutai & 3 Others (2025) eKLR.***

57. For an applicant to succeed in an application for injunction, he must satisfy the tests or principles set out in the case of ***Giella v. Cassman Brown & Co. Ltd*** ; These are not novel principles, since they have been replicated in many other decided cases being;

- i. The Applicant must satisfy the court that he has ***prima facie case*** , with a high probability of success, not just an arguable one;
- ii. The applicant must too establish that he will suffer ***irreparable Injury***, which injury that the applicant will suffer damage, he must prove that it cannot be compensated by an award of damages;
- iii. Further, when the court is in doubt, it will consider the ***balance of convenience***, the applicant must convince the court that if it is to consider the balance of convenience, then the court should determines whether

the inconvenience to the applicant if the order is refused is greater than the inconvenience to the respondent if it is granted.

58. Further, in an application for temporary injunction, the applicant must act with **honesty** and **disclose** all **material facts** to court, since failure to do so can lead to **denial** and/or **cancellation** of the injunction, if already grant. Therefore, the applicant has a duty to give **full disclosure**: See the case of ***Bahadurali Ebrahim Shamji Vs. Al Noor Jamal & 2 Others (1997) KLR.***
59. Having laid the above background, have the Plaintiffs/Applicants established the above principles for grant of injunctive orders as sought.?
60. Firstly, the Plaintiffs/Applicants needed to establish that they have a prima facie with probability of success at the trial. As variously held by courts, prima facie case in a temporary injunction is a demonstration by the applicant that he has a **genuine, arguable** case with a high **probability of success** at trial. It means the applicant has shown a clear, unmistakable right that is threatened, which requires interim relief, warranting **a status quo preservation** to prevent **irreversible damage** while the case is pending in court. See the case of ***Mboya v National Bank of Kenya & another (Civil Case E001 of 2024) [2024] KEHC 5786 (KLR) (16 May 2024) (Ruling).***

61. In the case of ***Mrao Limited v First American Bank of Kenya (2003) KLR 125***, the court held; “

“A prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the Applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”

62. The burden of proving a “prima facie” case lies with the party seeking for the injunctive orders, being the applicants herein. The Court of Appeal in the case of ***Nguruman Limited v Jan Bonde Nielsen and 2 others (2014) eKLR***, held that: -

“the party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.”

63. The court further held; -

“we reiterate that in considering whether or not a prima facie case has been established, the court does not hold a minitrial and must not examine the merits of the case closely. All that the court is to see is that on the face of it, the person applying for an injunction has a right which has been or is threatened with violation.

Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The Applicant need not establish title, it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges.

64. Have the Plaintiffs/Applicants herein established that they have a prima facie case with probabilities of success at the trial? The Plaintiffs/Applicants alleged that the dispute herein began in **2006**, between members of **Mbokishi Group Ranch**, as proprietors of land parcel No Cis Mara/ Ololulunga/113, now subdivided and members of **Ololoipangi** and **Oloisuisho** Group Ranches.
65. **This** dispute ended up at **Ololulunga Land Disputes Tribunal, Narok SPM Court, Nakuru High Court, and Nyeri Court of Appeal**. The Defendants/ Respondents averred that they have lived on the suit land since **1990**, after the 1st Plaintiff/Applicant allegedly attempted to sell the suit land to the Defendants. There is therefore a dispute as to who are the genuine owners of the suit land. The court cannot hold with certainty at this juncture that the Plaintiffs/Applicants are the genuine owners of the suit land.
66. **For** the court to determine the true proprietors of the suit land, evidence needs to be availed through viva voce, evidence which evidence will be tested through the usual cross examination. The court cannot rely on **Affidavit evidence** to confirm that the

Plaintiffs/Applicants have a stake on the suit land, as their claim needs to be tested through the main trial. See the case of

67. For the above reasons, the court finds and holds that the Plaintiffs/Applicants have not established a prima facie with probability of success at the trial.

68. On the second limb of ***whether the Plaintiffs/Applicants will suffer irreparable injury*** which cannot be compensated by an award of damages, the court refers to the same case of ***Nguruman Limited Case (supra)***, where it was held that: -

“.....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.”

69. In the instant application, the Plaintiffs /applicants have sought to have the Defendants/ Respondents restrained from dealing with the various suit properties. However, from the various Affidavit evidence, it is evident that the Defendants have been on the suit land since according to the applicants **2006**, when the dispute arose.

70. If the Defendants have been on the disputed parcels of land since 2006, then there is **no danger** that their presence will **waste, alienate** or **remove** the suit properties. Failure to grant the injunctive orders will not cause any irreparable injuries to the plaintiffs/applicants which cannot be compensated by an award of damages.

71. **Irreparable damages which cannot be compensated by an award of damages** was described as; as an injury that is actual, substantial, and demonstrable, yet cannot be "adequately" remedied by a monetary award, regardless of the amount. The criteria of describing irreparable injury are; **lack of measurable** standard: The said injury should be of such a nature that there is no standard by which its amount can be measured with reasonable accuracy. **Destruction of subject matter:** This means the act complained of is likely to destroy the very subject matter of the dispute such as unique land or a specific property, which would render any final judgment ineffectual. **Infringement of Unique Rights:** which means such infringement involves rights that money cannot restore. See the case of **Paul Gitonga Wanjau -vs- Gathuthis Tea Factory Company Ltd & 2 Others (2016) eKLR**.

72. Since the Defendants/Respondents have allegedly been in possession of the suit land since **2006**, then failure would not cause any irreparable injury that cannot be compensated by an award of damages. In the event the court would find in favour of the Plaintiffs/Applicants, then the court would definitely issue

an eviction order against the Defendants/Respondents, with usual accompanying costs.

73. The third and final test used by courts to determine whether to grant a temporary injunction, is the "balance of convenience" where the court weighs which party will suffer the greater harm if the injunction is either granted or denied. As established in the case of ***Giella v. Cassman Brown & Co. Ltd(supra)***, the court only considers the balance of convenience if there is "doubt" after evaluating the first two requirements: ***a prima facie case*** and ***potential irreparable harm***.

74. In the instant case, the Plaintiffs/Applicants have alleged that they are the owners of the suit properties in disputes. On the other hand, the Defendants/Respondents have averred that they have been in occupation of the suit properties for long. The ownership of the suit land can only be effectively determined after calling of evidence.

75. Since the court is in doubt, it will decide on the balance of convenience, and the balance of convenience herein is to maintain the status quo. The status quo herein is that each of the parties should remain on the respective parcels of land, until the main suit is heard and determined. For the above reasons, the court directs that the **status quo** be maintained, but **no restraining** orders will be issued as sought by the Plaintiffs/Applicants.

76. A balance of convenience, was defined in the case of ***Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR***, as follows:-

“The meaning of balance of convenience in favor of the Applicant is that if an injunction is not granted, and the suit is ultimately decided in favor of the Applicants, the inconvenience caused to the Applicant would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience, it is really the balance of inconvenience and it is for the Applicants to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the Applicants who suffer. In other words, the Applicants have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.”

77. Therefore, it is evident a court issues an order for maintenance of the **Status Quo** to preserve the state of affairs as they were before the dispute started, to prevent any permanent changes before the matter is heard and determined or before a final judgment is given.

78. Further, the court herein will consider the lower risk of injustice. Since there is uncertainty, the court will follow the principle of opting for the "lower rather than the higher risk of injustice. See the case ***Amir Suleiman Vs. Amboseli Resort Ltd (2004) eKLR.***
79. Consequently, the court finds and holds that **preservation** of the **status quo** herein is indeed the "lower risk", that is keeping things as exactly as they are right now. For the above reasons each of the parties herein to remain in **possession** of their **respective** portion of the suit properties that they have been in possession of, until the suit is heard and determined.
80. On costs, being guided by **section 27** of the **Civil Procedure Act**, which grants the court discretion to award costs, the court directs each and every party to bear his own costs.
81. On prayer **No 5**, this has been overtaken by events, as most of the Defendants/Respondents have participated in this interlocutory application, and were thus served and have appeared in court. No reasons were advanced for substituted service.
82. In a nutshell, after considering the argument for and against the instant application, Notice of Motion dated **11th February 2025**, the court declines to grant any **injunctive orders** as sought, but directs that **status quo be maintained** as described above.

It is so ordered.

Dated, signed and delivered virtually at Narok this 19th Day of February, 2026.

**L. Gacheru
Judge.**

Delivered online in the presence of

Elijah Meyoki - Court Assistant

Ms. Nyambura holding brief for Mr. Mburu for Plaintiffs/Applicants

M/S. Kirui holding brief for Mr. Langat for Defendants/Respondents as per the Memorandum of Appearance.

M/S. Cheruto for the other Defendants/Respondents as per the Memorandum of Appearance.

**L.Gacheru
Judge.**