

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELC (LC) E017 OF 2025

UPHILL CROPS LIMITED.....
.....PLAINTIFF

VERSUS

STEPHEN SAYIALEL OLE KOTI Alias SAYIALEL OLE KOTI.....
1ST DEFENDANT

PETER KOTI.....**2ND**
DEFENDANT

NABIKI MOSOITO.....**3RD**
DEFENDANT

RULING

1. Coming up for determination in this composite ruling are the applications dated 29.07.2025 (hereinafter referred to as **the first application**) as well as the application dated 24.09.2025 (hereinafter referred to as **the 2nd application**). Both applications were filed by the Plaintiff/Applicant.
2. The first application seeks injunctive prayers while the 2nd application is a contempt of court application. The court directed the hearing and determination of the applications to proceed simultaneously by way of written submissions given that in response to the first application, the Respondent raised a Notice Preliminary Objection which may dispose off the entire suit, and the court directed that the said preliminary objection be converted as a response to the first application and the suit.
3. A preliminary objection has to be decided first before any other issue and given the prominence of contempt application, the court was of the view that both applications could canvassed simultaneously and a composite ruling delivered, as it hereby does.

4. The first application seeks, the following orders
 - (i) Spent.
 - (ii) Spent.
 - (iii) Spent.
 - (iv) That pending hearing and determination of the suit inter-partes the Respondents, their agents and/or servants or anybody claiming through them be and are hereby restrained from harassing and/or evicting the Applicant from all that properly known as Narok/Transmara/Kimintet 'C'/11 and/or interfering with the peace and quiet enjoyment of agricultural activities of the Applicant on the said property.
 - (v) That costs of this application be provided for;
5. Grounds in support of the application, been *interalia*; -
 - (i) The Respondents leased to the Applicant Transmara/Kimintet 'C'/11 for a period of 30 years for agricultural purposes, at an annual rent of Kshs.400,000 for the 1st to 6th years, thereafter Kshs1,200,000/= from the 7th to 30th years.
 - (ii) The Applicant took possession and removed tree stumps for 6 months at months at a cost of Kshs25,2000,000/= in preparation of planting, and he planted sugarcane and maize on portions of the suit property and intends to do so for the remainder of the lease.
 - (iii) That the Respondents have without any colour of right and or any iota of justification threatened to evict the plaintiff from the suit property in disregard to the terms of the Agreement, and the Respondent intends to lease the property to Another person.
 - (iv) There is likely to have loss and damage that will occur once the Respondent is evicted.
6. In further support of the application is the supporting affidavit of Mr. Justus Kigen who reiterates the grounds in his deposition, but has

annexed photographs of earth movers ploughing the land, Mpesa statements as well as copy of the lease Agreement.

7. In response to this application a Replying affidavit of the 3rd Defendant/Respondent, Nabiki Mosoito was filed, as well as the Notice of preliminary objection, the 1st and 2nd Defendant/Respondent did not file a Response to the application.
8. In the Replying affidavit, the 3rd Defendant/Respondent depones *inter alia* that; -
 - (i) The application is fatally defective.
 - (ii) That the lease contravenes section 45 of the law succession that she did not execute the lease Agreement 01.08.2020, which was executed prior to issuance of letters of administration which makes it illegal, irregular and void ab initio that the suit property was registered jointly in names of Sayialel Ole Koti, Mosoito Ole Koti and Konchela Ole Koti.
 - (iii) That the deponent is the wife of the late Mosoito Ole Koti and whose Estate was issued with a Grant of letters of Administration which were confirmed on 08.08.2025.
 - (iv) The property was jointly registered in the name of the deceased but was unlawfully leased out by the 1st and 2nd defendant.
 - (v) The deponent also annexed the Grant of letters of administration, and a certificate of official search.
9. Similarly, the 3rd Defendant raised a notice of preliminary objection which mirrors the deposition in the Replying affidavit and which the court directed that the same be canvassed as part of the response.
10. The grounds in support of the preliminary objection is that;
 - (i) the lease agreement dated 01.08.2020 contravenes section 45 of the Law of succession; as it was drafted prior to issuance of the Grant of letters of administration in respect of the Estate of the late Mosoito Ole Koti and Konchela Ole Koti (both deceased) here the same was unlawful, illegal, null and void and thus the suit is

bad in law, vexatious and an abuse of the court process, and it is fatally defective.

11. Before this application was determined the Plaintiff/Applicant filed the 2nd application committal of the 3rd Respondent to Civil jail for breaching of the temporary injunctive orders that had been issued simultaneously with the filing of the suit and the first application herein.
12. The 3rd Respondent against whom the orders for committal to civil jail in relation to the contempt application were sought filed a Replying affidavit in which she denied the disobedience of the court orders.
13. The court directed filing of submissions in respect of both applications, which the court has considered.

Issues for Determination

14. Arising from the two applications, the court frames the following as the issues for determination;
 - (i) Whether or not the suit offends section 45 of the law of the succession Act.
 - (ii) If answer to (i) above is in the negative, are the applications dated 29.06.2025 and 24.09.2025 merited?
 - (iii) What reliefs ought to issue in respect of the applications.
 - (iv) Who bears the costs of the application?

Analysis and Determination

15. The preliminary objection as well as the Replying affidavit to the application filed by the 3rd Respondent are both premised on the suit offending section 45 of the law of succession Act.
16. Section 45 of the law of succession Act provides as follows; -
 - (i) ***“Except so far as expressly authorized by this Act or by any other written law or by a grant of representation***

under this Act, no person shall for any purpose take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

17. It is common ground between the parties herein, that the title in respect of Transmara/Kimintet C/11 was registered jointly in the name of the 1st Defendant, Mosoito Ole Koti and Konchela Ole Koti, as per the copy of the title exhibited by the Applicant as JD-2, and the Applicant expressly pleaded the same at paragraph 7 of his Plaintiff that the suit property was owned by the 3 individuals, two of who are deceased, and the property now fully owned by the 1st Respondent.
18. The lease Agreement was entered on 1st of August 2020. The 3rd Defendant disputed the capacity in which 1st Defendant could enter lease on her behalf without her authority, and she exhibited a Grant of letters of Representation in respect of the Estate Late Mosoito Ole Koti which was issued on 8th of August 2025. The Grant of letters administration which has since been confirmed was issued to the 3rd Defendant entitling her to defend the suit and take any action in relation to the estate of Mosoito ole Koti.
19. It follows therefrom that the Agreement for lease, entered into by the Plaintiff and the 1st Defendant herein could only be entered, in respect of the portion that belonged to Stephen Sayialel Ole Koti, the 1st Defendant, who is still alive, but the said Stephen Sayialel Ole Koti could not enter into the lease agreement on behalf of the other registered owners both of whom are deceased, to wit, Mosoito Ole Koti and Konchela Ole Koti; whose Estates he had no Grant of letters of representation, and he was not an Administrator thereof and simply lacked capacity to represent the said Estates.
20. The court therefore finds that the Plaintiff/Applicant could only enter a valid lease agreement with Sayialel Ole Koti the 1st Defendant/Respondent in respect of his shares but not the other registered owners.

21. An issue of whether the property was jointly owned or commonly owned would be an issue to be determined by evidence at the hearing of the matter, but as the Grant of letter of Representation was issued in respect of the Estate of the Late Mosoito Ole Koti to the 3rd Defendant/Respondent she is the personal representative thereof.

22. The court therefore finds that there was breach of section 45 of the Law of the Succession Act in so far as the lease agreement related to persons who were deceased and was executed before the Grant letters of Administration were issued hence there was intermeddling thereof but the lease agreement was is executed and is in existence in respect of the 1st Defendant/Respondent only.

23. In arriving at the said decision, I am guided by the decision in Virginia Edith

Wamboi Otieno vs Joash Ochieng Ougo C.A No.31 of 1987 in which the Court of Appeal held *inter alia* that **“But an administrator is not entitled to bring an action as.....before he has taken out Letters of Administration. If he does the action is incompetent from the date of inception.”**

24 Thus, in answer to issue number 1, the court finds that the suit against the first defendant is well founded on the existence of the Lease Agreement but that the suit against the 2nd and 3rd defendants contravenes section 45 of the Law of succession Act and that the plaintiff is non suited against them as the 2nd Respondent did not execute the lease neither was he said to have been an administrator of the estate of the 3rd Defendant while the 3rd Respondent obtained a Grant in 2025 way after the lease was executed and she did not equally execute the said lease.

24. Consequently, the court strikes out the suit against the 2nd and 3rd defendants.

25. On issue number 2, is the application dated 29.06.2025 merited? The principles for Grant of a temporary injunction were stated in Giella

vs Cassman Brown. The principles are: ***“Firstly, 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 imperable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”*** Has the Applicant established a prima facie as defined in Mrao Limited vs First American Bank Limited, were the same was defined as follows: - ***“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 part so as to call for an explanation or rebuttal from the latter.”***

26. The Applicant has exhibited before the court a Lease Agreement between himself and the 1st Respondent for undertaking Agricultural activities in Transmara/Kimintet C/11 for 30 years, the 1st respondent did not file a response to the application, leaving the Depositions of the Applicant uncontroverted the court has found the lease to have been executed between the 1st Respondent in respect of his shares in Transmara/Kimintet C/11 and the Applicant, and the same conferred contractual rights on the Applicant.

27. Order 40 Rule (2) under which the application is founded recognizes rights conferred by contracts as it provides as follows; -

“in any suit for restraining the defendant from committing a breach of contract, or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may at any time, after commencement of the suit and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a

like kind arising out of the same contract or relating to the same property or right..."

28. The Applicant has approached the court under this provision *interalia*, which recognizes rights bestowed by contracts, and having exhibited the Lease Agreement which is a contract he has thus proven a *prima facie* case.

29. On the other aspects of Giella Vs. Cassman Brown, a breach of contract and threats to repudiate the lease he same will cause irreparable loss in respect of the investment that the Applicant has put in and the balance of convenience tilts in favour of the Applicant in view of the Stage of the project, having tilled the property and the farming activities as deponed.

30. On the second application seeking committal of the 3rd Defendant to civil jail. The application was specific against the 3rd Defendant and not the 1st and 2nd Defendant

31. Having found the suit against the 3rd Defendant defective and struck it out, it follows that the contempt application becomes moot. The issue of mootness having been defined in the case of Institute for Social Accountability and another Vs. National Assembly and 5 others Petition no 1 of 2018 KESC 39 KLR where the court held *interalia*, **"A matter was moot when it had no practical significance or when the decision would not have the effect of resolving the controversy affecting the rights of the parties before it. If a decision of a court would have no such practical effect on the rights of the parties, a court would decline to decide on the case. There had to be a live controversy between the parties at all stages of the case when a court was rendering its decision. If, after the commencement of the proceedings, events occurred changing the facts or the law which deprived the parties of the pursued outcome or relief, then, the matter became moot. Where a new statute was enacted**

that unequivocally addressed the concerns that were at the heart of a dispute, then such a dispute would be moot.”

31. The upshot is that; -

- (i) The suit against the 2nd having been found to have no basis from the Lease agreement hence the Plaintiff is thus non suited against the 2nd Defendant and the suit against the 2nd Defendant is thus struck out and in respect of the 3rd Defendants the suit offends the provisions of section 45 of the law of succession Act and it is equally hereby struck out.
- (ii) Application dated 29.06.2025 is allowed in terms of prayer 4 thereof as against the 1st Defendant/Respondent only.
- (iii) Application dated 24.09.2025 is found to be moot and it is dismissed.
- (iv) Costs in the cause.

Dated at Kilgoris 9th day of February, 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA - Sylvia/Sandra/Clara

Mr. Kiprotich for the 3rd Defendant/ Respondent

Mr. Mogambi for the Plaintiff/ Applicant.