

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
ELCLC E053 OF 2025

JOSEPH NGIDA OLOOMONI.....
PLAINTIFF

-VERSUS-

MBIRIKANI GROUP RANCH –
CO-OPERATIVE SOCIETY LIMITED.....1ST
DEFENDANT

KINYAKU KONEI.....
.....2ND DEFENDANT

MARIKA KITESHO.....
3RD DEFENDANT

DANSON MOLOIMET LEPAP.....
4TH DEFENDANT

DANIEL METOE.....
.....5TH DEFENDANT

DANIEL MAPI.....
6TH DEFENDANT

SUYIANKA LEPARAU.....
.....7TH DEFENDANT

MBIRIKANI GROUP RANCH.....
.....8TH DEFENDANT

GIDEON KETENTE AND 2799 OTHER.....INTERESTED
PARTIES

RULING

*(In respect of the Plaintiff's Motion dated 2nd May, 2025 seeking temporary
injunction pending the hearing and determination of the suit)*

Introduction

1. Vide a Notice of Motion dated **2nd May 2025**, brought under **Sections 1A, 1B, and 3A** of the **Civil Procedure Act** and **Order 40 Rules 1 and 2** of the **Civil Procedure Rules**, the Plaintiff seeks the following orders:

a) Spent.

b) Spent.

c) That pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants, whether by themselves, their servants, agents, or any person claiming through or under them, from subdividing, offering new leases, selling, offering for sale, or renewing existing lease agreements with different parties in respect of OLOITOKTOK/MBIRIKANI/744, 785, 789, 888, 890, 891, and 892, all arising out of LOITOKTOK/MBIRIKANI/733, and any other property held by the 1st Defendant, or allocating properties in the following townships: Nabulaa, Olng'osua, Isinet, Simba, Enkaji Naiborr, Ichalai, Kalesirua, Inkoisuk, and Loolpipai.

2. The Motion is supported by the Affidavit of **Joseph Ngida Oloomoni**, sworn on **2nd May 2025**, who deposes that he and the 2nd to 7th Defendants are former members of the now dissolved **Mbirikani Group Ranch**. It is affirmed

that on **10th May 2021**, the Mbirikani Group Ranch members unanimously voted to transform the group ranch into a Co-operative Society with the objective of subdividing its land or shares among its members based on a resolution approved during its Annual General Meeting of **16th December 2020**.

3. It is asserted that despite the registration of the 1st Defendant on **11 June 2021**, roughly only **10 members** have been enrolled into the society while over **4,200 individuals** remain unregistered, contrary to the 1st Defendant's spirit, intentions, and societal by-laws.
4. According to the Plaintiff, the 1st Defendant's properties, namely **OLOITOKTOK/MBIRIKANI/744, 785, 789, 888, 890, 891, and 892**, previously owned by the Group Ranch and subdivided from **OLOITOKTOK/MBIRIKANI/733**, were leased to third parties to generate income for the collective benefit of the society members. Further, contributions from members and proceeds from the leases are deposited into the 1st Defendant's account.
5. The Plaintiff claims that internal conflict and the emergence of two rival groups, comprising the **2nd to 4th Defendants** on one hand and the **5th to 7th Defendants** on the other hand, have marred the transition process and

taken advantage of the impending transition. Additionally, these rival groups have individually threatened to irregularly subdivide, lease, and dispose of the 1st Defendant's properties to third parties and have even approached **National Cement Limited**, purporting to grant them lease agreements without the approval of the remaining unregistered members.

6. Based on the Plaintiff's assertions, prospective buyers were scheduled to view certain disputed properties on **3rd May 2025** after the 1st Defendant allegedly advertised them for sale. To protect the suit property, which is the subject matter of this suit, from unlawful disposal by the 1st Defendant and to uphold the integrity of the transition process and the rights of all concerned members, the Plaintiff implores the Court to issue the orders sought. He affirms that the 1st Defendant's unlawful actions seriously prejudice its members and inflict irreparable harm through mismanagement and unlawful disposal of its property.

The 1st to 4th Defendants' Case

7. The 2nd to 4th Defendants have vehemently opposed the application through the Affidavit of **Kinyaku Konei**, sworn on **8 May 2025**.
8. It is alleged that the **2nd, 3rd, and 4th Defendants** were duly elected as officials of the 1st Defendant on **26th April 2024**, as confirmed in an official

search conducted on **8th May 2024** at the **Ministry of Co-operative and Micro, Small and Medium Enterprises Development**. Further, the officials executed their mandate and took control of the 1st Defendant's affairs in accordance with its Constitution, By-Laws, and the **Co-operative Societies Act, Cap 490**.

9. The Deponent accuses the **5th to 7th Defendants** of unlawfully interfering with the smooth operation of the 1st Defendant affairs by fraudulently and illegally attempting to dispose of its properties, thereby disrupting the proper administration of the 1st Defendant's affairs and assets. As a result, the lawfully elected officials of the 1st Defendant reported their actions to the relevant law enforcement authorities.

10. In addition, cautionary notices were issued to the 1st Defendant's members and the general public, warning them of these fraudulent actions. The Deponent maintains that the 1st Defendant has taken necessary lawful steps to safeguard its assets for the benefit and interests of its members and to prevent unsuspecting members of the public from falling prey to unlawful and fraudulent schemes.

11. According to the 2nd to 4th Defendants, the site viewing notices are forgeries meant to mislead the public, as they never originated from the 1st Defendant or its legitimate officers.

5th Defendant's Case

12. The application is opposed by **Daniel Metoe**, the 5th Defendant herein, through his Replying Affidavit sworn on **23rd May 2025**. He deposes that, as the Interim Chairperson of the 1st Defendant, he has been authorized to prosecute this application and the entire suit.

13. He avers that on **10th May 2021**, the members of the **Mbirikani Group Ranch** resolved to establish the 1st Defendant in order to advance their interests and hold the remaining communal land for the welfare of its members. Further, through a Ruling delivered on **6th December 2024** in **MCCOMMSU/E005/2024**, the Court confirmed and recognized the **5th to 7th Defendants** as the officials of the 1st Defendant based on records from the Commissioner of Co-operative Societies. Hence, it is alleged that the **2nd to 4th Defendants** do not represent the 1st Defendant and neither can they issue any lawful instructions on its behalf.

14. The Deponent avers that on **31st August 2024**, the **Mbirikani Group Ranch** unanimously passed a resolution authorizing the 1st Defendant to negotiate

new leases and extend existing leases on behalf of the Group Ranch. Thereafter, the Deponent, together with members of the 1st Defendant's Management Committee, began negotiations with investors in consultation with its members.

15. It is asserted that the negotiations, which are at an advanced stage, seek to ensure that the Group Ranch members, including the Plaintiff, receive financial and non-financial benefits. Therefore, the assertions raised by the Plaintiff that the 1st Defendant intends to dispose of its communally owned land are incorrect because the land cannot be sold without consulting the Group Ranch members.

16. According to the Deponent, the application is a scheme hatched by the **2nd to 4th Defendants** to frustrate him and other duly elected officials of the 1st Defendant in the management of its affairs. This is because, to date, no site viewing has been undertaken on the suit property for purposes of sale or purchase, yet the Plaintiff alleged that a site viewing notice inviting prospective buyers was scheduled for **7th May 2025**.

17. The **2nd to 4th Defendants'** proxies and agents, acting at their behest, are blamed for subjecting the **5th Defendant** and his co-officials to multiple legal proceedings so as to frustrate, harass, and impede them from discharging

their official duties despite being the duly recognized and legitimate officials of the 1st Defendant.

18. The 5th Defendant maintains that the interim orders issued in this matter must be vacated as they were procured through misrepresentation and material non-disclosure. Additionally, the Plaintiff is criticized for failing to disclose any prima facie case to warrant the issuance of injunctive reliefs. It is further stated that if the interim orders are not lifted, the 1st Defendant and the entire Group Ranch will suffer irreparable harm because the ongoing investment negotiations, overwhelmingly supported by the Interested Parties, who are the majority of the Group Ranch members, risk complete collapse.

Interested Parties' Case

19. Through the Replying Affidavit of **Gideon Ketente**, sworn on **17th December 2025**, the Interested Parties seek the dismissal of the application with costs because it is unmerited and does not disclose any prima facie case to justify injunctive reliefs or the continuation of the interim orders.

20. According to the Interested Parties, the application is a scheme hatched by the Plaintiff and the **2nd to 4th Defendants** to frustrate, impede, and defeat

the financial and non-financial benefits intended for the 1st Defendant's members.

21. It is stated that on **10th May 2021**, the Group Ranch members passed a resolution to form the 1st Defendant in order to advance their interests and hold the remaining communal property following the subdivision of the Group Ranch land. Further, on **31st August 2023**, the Interested Parties passed a resolution authorizing the 1st Defendant to negotiate new leases and extend existing leases on behalf of the Group Ranch.

22. It is asserted that the 1st Defendant stands to earn hundreds of millions in investment for the benefit of its members because negotiations commenced by its officials, led by the **5th Defendant**, are at an advanced stage. Further, the 1st Defendant's legitimate officials, being the **5th, 6th, and 7th Defendants**, guaranteed and assured the Interested Parties that the 1st Defendant's properties cannot be sold without the consent of the Group Ranch members.

23. With respect to the allegations that the 1st Defendant issued site viewing notices, it is averred that this was a scheme aimed at deceiving this Court into issuing adverse interim orders. Consequently, the interim orders ought to be lifted and the injunctive orders denied. This is because the majority of

the 1st Defendant's members overwhelmingly support the leases and ongoing investment negotiations, through which millions of shillings will be paid for the benefit of all members.

Court's Directions

24. On **11th December 2025**, the Court directed that the Plaintiff's application be canvassed orally on **20th January 2026**. Additionally, counsel for the parties were directed to file and exchange authorities and precedents they wished to rely on during the hearing. Counsel for the parties advanced arguments in support of their respective cases through oral submissions.

Issue for Determination

25. Having carefully analyzed the application, the affidavits by the Defendants and Interested Parties, as well as the oral submissions by their respective learned counsel, the only issue for determination is whether the Plaintiff's application meets the threshold for the grant of a temporary injunction pending the hearing and determination of the main suit.

Analysis and Determination

26. It is not disputed that the 1st Defendant was established following a resolution made on **10th May 2021** by members of the Mbirikani Group Ranch to transform the Group Ranch into a co-operative society. The

purpose of establishing the 1st Defendant was to advance the interests of its members by holding the remaining communal land and negotiating or extending leases on their behalf following the subdivision of the Group Ranch land.

27. It is also common ground that the Plaintiff, the Defendants, and the Interested Parties are all former members of the Mbirikani Group Ranch. Further, they acknowledge that during the Group Ranch's Annual General Meeting held on **16th December 2020**, members passed a unanimous resolution to transition the Group Ranch into a co-operative society, which subsequently led to the registration of the 1st Defendant on **11th June 2021**.
28. The Plaintiff contends that only about ten members have been enrolled and registered as members of the 1st Defendant out of over 4,200 individuals, which he argues is contrary to the spirit, intention, and by-laws governing the transition. The Plaintiff further alleges that there exist two rival groups claiming to be the legitimate officials of the 1st Defendant, one comprising the 2nd to 4th Defendants and the other comprising the 5th to 7th Defendants.
29. However, the issue as to who the legitimate officials of the 1st Defendant are is the subject of proceedings in **Kajiado MCOMMSU/E005/2024**. This

Court will therefore refrain from making any determination on that issue, particularly because the Court lacks jurisdiction to determine such matters in light of the provisions of *Article 162(2)(b)* of the *Constitution and Section 13(1) and (2) of the Environment and Land Court Act*.

30. The basis upon which the Plaintiff instituted this suit and the present application is the allegation that there were attempts to irregularly subdivide, lease, or dispose of the 1st Defendant's properties, namely **OLOITOKTOK/MBIRIKANI/744, 785, 789, 889, 890, 891, and 892**, all arising from **LOITOKTOK/MBIRIKANI/733**. The Plaintiff further alleged that the Defendants had advertised some of the properties for sale and that prospective buyers were scheduled to view the properties on **3rd May 2025**.
31. The Defendants and the Interested Parties have, however, disputed these allegations and contend that the alleged site-viewing notices were not issued by the 1st Defendant or its legitimate officials. They further argue that the interim orders issued ex parte on **7th May 2025** were obtained through misrepresentation and non-disclosure of material facts. According to them, the continuation of those orders would negatively affect ongoing

negotiations relating to leases and investments intended to benefit all the members of the former Group Ranch.

32. The principles governing the grant of temporary injunctions are well settled.

In *Giella vs Cassman Brown & Co. Ltd [1973] EA 358*, the Court held that:

“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 an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

33. Further guidance on what constitutes a prima facie case was provided in

Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125,

where the Court stated:

“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.”

34. Similarly, the *Court of Appeal* in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR* emphasized that the three conditions for the grant of an injunction must be satisfied sequentially and stated:

“These are the three pillars on which rests the platform of order 40 rule 1 of the Civil Procedure Rules. The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is sequential so that the second condition can only be addressed if the first one is satisfied, and when the court is in doubt, it proceeds to consider the third condition.”

35. Applying the above principles to the present application, the Plaintiff’s claim is largely based on unsubstantiated apprehension that the suit properties may be irregularly disposed of. However, the Defendants and the Interested Parties have placed before the Court material indicating that negotiations concerning leases and investments are ongoing for the benefit of the entire membership. Not the slightest evidence has been provided of any intention to sell the properties.

36. The Court also takes into account that the law imposes a duty of full and frank disclosure upon a party seeking such orders. In *Bahadurali Ebrahim Shamji vs Al Noor Jamal & 2 Others [1998] eKLR*, the Court emphasized this duty and stated:

“It is perfectly well settled that a person who makes an ex parte application to the court — that is to say, in the absence of the person who will be affected by that which the court is asked to do — is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings.”

37. From the material placed before this Court, it is evident that there have internal been disputes relating to the management and leadership of the 1st Defendant and the manner in which its affairs are being conducted. Those issues are substantive matters that will properly fall for determination in the related proceedings already pending before another forum. From a careful analysis of the response by the 2nd to 4th Defendants, the court agrees with the Interested parties that the application is a scheme hatched by the Plaintiff and the **2nd to 4th Defendants** merely to impede the 5th to 7th Defendants

from carrying on their responsibilities as the elected officials of the 1st Respondent. The allegations by the Plaintiff have not been substantiated. The group ranch which was the predecessor of the 1st Respondent indeed previously used to lease the properties as submitted by the 1st, 5th to the 7th Defendants and the Interested Parties. There is nothing out of the ordinary being done by the 1st Respondent.

38. Additionally, the Court cannot ignore the wider interests of the larger membership. The material presented indicates that a significant number of members support the ongoing negotiations relating to leases and investments intended to generate income for their own benefit. The continued existence of the interim orders is therefore likely to prejudice the economic interests of a large number of members.
39. In the circumstances, this Court is not satisfied that the Plaintiff has established a prima facie case with a probability of success. Having failed to satisfy the first limb of the test, it is not necessary for the Court to consider the other limbs in detail.
40. Consequently, I find that the threshold for the grant of a temporary injunction has not been met and that sufficient grounds have been

demonstrated to warrant the setting aside of the interim orders issued earlier.

41. Accordingly, *the Plaintiff's Notice of Motion dated 2nd May 2025 is hereby dismissed with costs.*
42. For the avoidance of any doubt, *the interim orders issued on 7th May 2025 are hereby set aside.*

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 19th Day of February 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Ms. Amwama for the Plaintiff/Applicant (h/b for Mr. Kiprop)

Mr. Pareno for the 1st Defendant/Respondent; also h/b for Mr. Maina

Makome for the 5th to 7th Defendants/Respondents

Mr. Oriema for the Interested Parties

Mr. Musonye for the 2nd to 4th Defendants (h/b for Mr. Kamenju)

Court Assistant: Mpoye

M.D. MWANGI
JUDGE