



**Wairimu & another (Suing as the Administrator of the Estate of Juma Kiplenge) v Chirchir & another (Environment and Land Case E109 of 2025) [2026] KEELC 1028 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1028 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E109 OF 2025  
MAO ODENY, J  
FEBRUARY 25, 2026**

**BETWEEN**

**JEDIDAH WAIRIMU ..... 1<sup>ST</sup> APPLICANT**

**AGNES JEBET KIBANJA ..... 2<sup>ND</sup> APPLICANT**

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF JUMA KIPLENGE**

**AND**

**FRANCIS CHIRCHIR ..... RESPONDENT**

**AND**

**HENRY KIPTIONY KIPLANGAT ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect of the Applicant's Notice of Motion dated 18<sup>th</sup> November, 2025, seeking the following orders:
  - a. Spent.
  - b. That pending the hearing and determination of this application, a temporary injunction do issue restraining the Defendant, his servants, agents, employees and/or any persons acting under his authority or instructions from entering, trespassing upon, cultivating, constructing on, alienating, or in any manner whatsoever interfering with Plot Nos. 73, 74 and 209 subdivisions of LR No. 13187/2.
  - c. That pending the hearing and determination of the suit, a temporary injunction do issue restraining the Defendant, his servant, agents, employees and/or any persons acting under his authority or instructions from entering, trespassing upon, cultivating, constructing on



alienating, or in any manner whatsoever interfering with Plot Nos. 73, 74 and 209, subdivisions of LR No. 13187/2.

- d. That costs of this application be provided for.
2. The Application was supported by the annexed affidavit of the Applicant, Silas Jedidah Wairimu, sworn on 18<sup>th</sup> November 2025, where she deponed that the deceased was her late husband and the father of the Co-Applicant Agnes Jebet Kibanja. She stated that the deceased, together with the Interested Party was the registered owner of all that parcel of land known as LR No. 13187/2.
  3. The Applicant deponed that the deceased and the Interested Party undertook to have the parcel of land subdivided into 209 portions which application was approved and allowed by the county government of Nakuru in accordance with the Physical Planning Act, and the portions allocated to different uses, namely residential, agricultural, public utility, commercial and educational.
  4. It was the Applicant's disposition that Plot Nos. 73 and 74, both measuring 0.94 hectares were set aside for the deceased and the IP's private ownership, respectively, while Plot No. 209 was set aside for the future construction of a primary school which was adjacent to the two plots.
  5. She also deponed that the late husband died on 7<sup>th</sup> October 2022, before the titles of the portions were processed and that they used to carry out agricultural activities on Plot Nos. 73 and 209, with the knowledge of the Defendant. The Applicant further deponed that she obtained the grant of letters of administration and in 2023 she planted khat (Muguka) in the two plots without any objection by the Defendant or the Interested Party with the understanding that she would remove them when there was a need to develop the properties.
  6. According to the Applicant, on 15<sup>th</sup> November 2025, the Defendant led a group of thugs who invaded the plots and destroyed all the crops and she reported the matter to Kampi Ya Moto Police Patrol Base and was issued with an OB No. 12/15/11/2025. The Defendant also set ablaze the stores and staff quarters.
  7. The Applicant deponed that she suffered damage and lost crops grown on 1.5 hectares worth approximately Kshs. 6.5 million, loss through arson and destruction of stores and staff quarters worth Kshs 500,000/= and loss of enjoyment of the property. She urged the court to allow the application for injunction restraining the Defendant and his servants from interfering with the suit land pending the hearing and determination of the suit.
  8. The Interested Party Henry Kiptiony Kiplangat filed a replying affidavit and deponed that it is true that they bought the suit Plots together with the Deceased.
  6. The Interested Party Deponed that the allegation that Plots Nos. 73 and 74 were set aside for private ownership of the Applicants or the Estate of the deceased is factually incorrect, misleading, and unsupported by any documentary evidence, as Plot No. 209, was specifically reserved as a public utility plot, intended for use as a nursery school, primary school, or other future public purpose, as clearly reflected in the approved survey maps and mutation forms.
  7. It was his disposition that the Applicants have no proprietary, beneficial, or equitable interest in the said plots and their assertions are aimed at misleading this Honourable Court, and urged the court to dismiss the Application with costs.
  9. The Defendant Francis Chirchir also filed a replying affidavit sworn on 1<sup>st</sup> December 2015, and deponed that it is not in dispute that the original parcel LR No. 13187/2 was registered in the name of the deceased and the Interested Party. He further deponed that he purchased two parcels of land,



known as Plot Nos. 32 and 33, whereby he was issued with an allocation/beacon certificate by the late Juma Kiplenge through his law firm- Kiplenge & Kurgat Advocates.

10. It was his disposition that he has been in occupation and possession of the same since allocation in the year 2015, and has substantially developed it with a permanent house where he resides with his family. He further stated that it is in the public domain that in the year 2019, it became necessary to designate portions of the said LR No. 13187/2 for purposes of setting up public utilities, and that Plot 209 which is approximately 3.5 acres was set aside for the establishment of a Primary School.
11. The Defendant/Respondent deponed that as such, there is no justification for the Applicants to be undertaking Khat farming on Plot 209 as alleged by Jedidah Wairimu, and further that neither the late Juma Kiplenge nor Prof Henry Kiptiony, both of whom are reputable members of the community, have ever taken part in Khat farming in the said area.
12. The Respondent denied the allegations that on the 15<sup>th</sup> November 2025, he led any group of people to invade the land, to destroy crops allegedly valued at Kshs. 6,500,000/= or set any stores ablaze as alleged. Further, that he has never, whether by himself, agents or persons associated with him, committed any acts of trespass, crop destruction or arson as alleged.
13. It was the Defendant's further disposition that he has no personal interest in Plot Nos. 73, 74 and 209 and therefore the injunctive reliefs sought are wholly unnecessary and an abuse of court process. Further that the Occurrence Book extracts annexed merely indicate that a report was made to the Police, and there is no indication as to what report was made, neither does it attribute any wrongdoing to him nor does it constitute proof of criminal conduct or civil liability.
14. The Respondent urged the court to dismiss the application with costs as the Applicants have not met the threshold for the grant of injunction.

### **Plaintiff's Submissions**

15. Counsel for the Plaintiffs filed submissions dated 8<sup>th</sup> December 2025, and identified the following issues for determination:
  - a. Whether the Plaintiffs have established a prima facie case warranting the grant of interlocutory injunctive relief?
  - b. Whether the Plaintiffs will suffer irreparable harm incapable of compensation by damages, and whether the balance of convenience favours granting the injunction?
  - c. Whether the Plaintiffs are entitled to the costs of the application?
16. On the issues as to whether the Applicants have established a prima facie case warranting the grant of interlocutory injunctive relief, counsel relied on the case of *Giella v Cassman Brown & Co. Ltd* f 19731 EA 358, and submitted that the Court cannot move to the second or third limbs without being satisfied that an arguable right exists that merits preservation.
17. Mr. Karanja submitted that the Applicants have placed before this Court a comprehensive factual matrix, properly anchored in their Complaint and the Supporting Affidavit sworn on 18<sup>th</sup> November 2025, demonstrating that they hold lawful, recognized interests in Plots Nos. 73, 74 and 209 interests not conjured by assertion but proven through documentary exhibits.
18. Counsel further submitted that the Applicants annexed Notification of Approval of Subdivision, Certificate of Title to LR No. 13187/2, and the subdivision plan deposited with the County



Government and the averments detailing long-standing possession and cultivation, have demonstrated their rights which needs to be protected and preserved pending the hearing of this case.

19. Counsel further relied on the Court of Appeal case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003], and submitted that the Applicants attached police OB extracts, photographs of burnt structures, and documentation of cultivated parcels ravaged by trespass as proof of a prima facie case as stated in the supporting affidavit. Counsel also relied on Sections 24, 25 and 26 of the [Land Registration Act](#), which affirm that title and interests shown in the register constitute conclusive evidence of ownership and are to be protected except where procured by fraud or misrepresentation. The Applicants annexed a copy of Certificate of Title for LR No. 13187/2 in the names of the estate administrators, as well as the duly approved mutation and subdivision plan outlining Plots 73, 74 and 209.
20. On the issue whether the Applicants will suffer irreparable harm incapable of compensation by damages, and whether the balance of convenience tilts in favour of granting the injunction, counsel submitted that the destruction and burning of the farm produce together with the stores and staff quarters, while the immediate financial quantification may suggest that damages could be assessed, the true extent of the harm transcends economics, because the Respondent's conduct represents an ongoing and escalating pattern of violence that threatens to permanently alter the character, productivity, and security of the Applicants' land, and relied on the cases of *Nguruman Ltd v Jan Bonde Nielsen* [2014] eKLR, *Olympic Sports House Ltd v School Equipment Centre Ltd* [2012] eKLR, where the Court held that "harm is irreparable where the subject matter is unique or where its loss cannot be reversed through compensation."
21. It was counsel's submission that the cultivated 'muguka' plantations are not simply commodities in storage; they are growing investments tied to land whose productivity is now under siege. Thus, the Applicants' agricultural livelihood cannot be replicated by any damages awarded later, a fact that strongly supports the presence of irreparable harm. That trespass accompanied by arson, aggression and repeated threats cannot be reduced to a compensable tort, for the law recognizes that persistent trespass creates an intolerable environment that erodes the rights, dignity and security of the landowner, and counsel cited the cases of *Kenleb Cons Ltd v New Gatitu Service Station Ltd & Another* (1990) eKLR, *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR, *Kairu v Gacheru* [1988] eKLR
22. Mr. Karanja relied on the case of *Republic v National Land Commission ex parte Holborn Properties* [2016] eKLR, where the court observed that "courts must favour parties who act lawfully and discourage those who attempt to bypass legal avenues" and submitted that granting an injunction reinforces lawful dispute-resolution and discourages future self-help. Counsel further cited the case of *Ataro v Agricultural Finance Corporation* (2020) eKLR, where it was held that courts must use interim orders to avert chaos and preserve peace pending trial.
23. Counsel therefore urged the court to grant the orders as prayed with costs to the Applicants.

### **Defendant's Submissions**

24. Counsel for the Defendant filed submissions dated 8<sup>th</sup> December 2025 and identified the issues for determination as to whether the Applicants have met the legal threshold for the grant of the injunctive reliefs sought and who is to bear the costs of the Application.
25. Counsel relied on the principles for grant of injunctions and submitted that the Applicants have not met the threshold for grant of the reliefs sought as the Defendant has categorically stated that he has no interest in the suit plot Nos. 73, 74 and 209.



26. Counsel further submitted that the injunction sought will not serve any practical purpose as it will merely restrain the Defendant from interfering with land that he has never claimed, accessed and has no intention of accessing.
27. Counsel urged the court to dismiss the Applicants application with costs to the Defendant.

### **Analysis And Determination**

28. The issue for determination is whether the Applicants have met the threshold for grant of a temporary injunction as was held in the case of *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358. (supra)
29. A party making an application for temporary injunction must establish that he/she has a prima facie case with a probability of success, demonstrate irreparable injury if a temporary injunction is not granted, and if the court is in doubt it should decide on a balance of convenience.
30. Similarly Order 40 r. (2) CPR provides that:
  - “(1) 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 the 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.
  - (2) The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.”
31. The Applicants gave a detailed background of how the late husband/father bought the suit land together with the Interested party and subsequently subdivided the same into 209 plots. The Respondents apart from the fact that Plot No. 209 was reserved for public utility, which the Applicants also acknowledged in their averments, do not dispute this.
32. There is further evidence from the annexed photographs that there were some agricultural activities that were being undertaken on the suit parcel of land and that destruction of the stores and arson was reported to the Police station and OB issued.
33. However, the Defendant disputed the claim and stated that the Occurrence Book extracts annexed merely indicate that a report was made to the Police. There is no indication as to what report was made, nor does it attribute any wrongdoing to him nor, does it constitute proof of criminal conduct or civil liability.
34. I agree with the Defendant’s submission that the Occurrence Book extracts annexed do not indicate what report was made and further do not link it to any occurrence on the suit land. Similarly, it does not attribute any wrongdoing to the Defendant.
35. There is also evidence of a certificate of title, approved subdivision and mutation forms, photographs in respect of the suit parcels of land which has been confirmed by the Interested party. This is prima facie that the Applicants and the Interested Party have a proprietary interest that has to be protected and be preserved pending the hearing and determination of this suit.



36. An order of injunction is an equitable and discretionary remedy as was held in the Court of Appeal case of Charter House Investments Ltd Vs Simon K. Sang & 3 Others (2010) eKLR, that:

“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the Court requires protection and maintenance of the status quo. The award of a temporary injunction by Courts of equity has never been regarded as a matter of right even where irreparable injury is likely to result to the Applicant. It is a matter of sound judicial discretion, in the exercise of which the Court balances the convenience of the parties and possible injuries to them and to third parties.”

37. Additionally, the court has a discretionary power to grant orders of status quo aimed at preventing any action that would interfere with the subject matter of the case rendering the hearing of the case an academic exercise. If the court finds that the situation requires the preservation of the existing state of affairs rather than a proactive injunction, it can issue a status quo order.

38. The Defendant deponed that he purchased Plot Nos. 32 and 33 and was issued with an allocation/ beacon certificate. He also stated that he had developed the suit parcels where he resides with his family. It was his further disposition that he had no proprietary interest in Plot Nos. 73, 74 and 209, had never accessed and do not intend to access them.

39. In the case of Kenya Airline Pilots Association (KALPA) – Versus – Co - Operative Bank of Kenya Limited & another [2020] eKLR, the purpose of a status quo order was explained as follows:

“... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

40. I have considered the application, the responses, together with the submissions by counsel, and find that an order of status quo would suffice in this case to preserve the suit parcels of land pending the hearing and determination of the suit. The costs of the Application are in the cause.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 25<sup>TH</sup> DAY OF FEBRUARY 2026.**

**M. A. ODENY**

**JUDGE**

