

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELCLC E028 OF 2025

OLOOLOLO GAME RANCH LIMITED.....
.....PLAINTIFF

VS.

DANIEL TULITO OLE SURURU.....1ST
DEFENDANT

BEN LONGIS NECHALA NAIDUYA.....2ND
DEFENDANT

RULING (2)

1. On 2/3/2026, the court delivered a Ruling in respect of prayers 7 or 8 of the application and allowed the said prayers.
2. Mr. Kere Learned Counsel for the Applicant however due to the court's attention of the pending prayer 5 and 6 of the application, this Ruling thus relates to prayer 5 and 6 of the application, which was argued orally on 20th of November 2025, while prayer 7 and 8 were dispensed with by way of written submissions. This Ruling is thus in respect of prayer 5 and 6 of the application dated 29th October 2025.
3. Prayer 5 and 6 seek Mandatory Injunction as well as police assistance.
4. The said prayers are as follows;
5. That a Mandatory Injunction be issued against the Defendants whether by themselves, their agents, and or servants however to forthwith remove the construction material deposited on the Plaintiff's property known as Transmara/Oloololo/1 and any structures erected failing which the same shall be removed by the Plaintiffs at the Defendants costs and expenses."
6. That this Honourable court does not order the OCPD Transmara South and the O.C.S Lolgorian Police station to provide security and

assistance to the Plaintiffs in the execution of the order for the removal by the Plaintiff, at the Defendants costs and expense, of all construction materials deposited by the Defendants by the Plaintiffs property known as Land reference Transmara/Oloololo/1 and any structure erected thereon.

7. As noted at paragraphs 4 of the Ruling dated 2/3/2026 in respect of this same application. Prayers 5 and 6 in the application mirror the substantive prayer C of the suit which equally seeks mandatory injunction for the removal of the construction material deposited on the Plaintiffs land.
8. The issue for the determination arising in respect of prayer 5 and 6 is whether the application meets the threshold of issuance of an Interlocutory mandatory injunction.
9. Mr. Kere submitted that this was an exceptional case that could not await the determination of the suit, as construction material was deposited on the suit property as evidenced by the photographs, annexed in the supporting affidavit.
10. Mr. Otieno for the Respondent differed and argued that this was no exceptional circumstances to warrant the issuance of the Interlocutory mandatory injunction.
11. The law on interlocutory mandatory injunction was stated in the decision of Kenya Breweries Limited Vs. Washington Okeyo where the court held *inter alia*,
“A Mandatory Injunction ought not to be granted on an Interlocutory application in the absence of special circumstances and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summarily act which could be easily remedied or where the defendant had attempted to steal a March on the Plaintiff...”

12. Guided by the above principles the court now asks whether the application meets the threshold for grant of a Mandatory Injunction at the Interlocutory stage.
13. Whereas a case for a temporary prohibitory injunction was met under the threshold of Giella Vs. Cassman Brown Limited; the court does not find that a case of mandatory injunction has been met, for reasons that
- (i) the Respondents have annexed copies of titles of subdivisions of Transmara/Olorien/37 which they indicate borders the Plaintiff's suit, and in which they indicate the construction is ongoing, on that property.
 - (ii) No survey report was filed by the Plaintiffs to show that the construction material were deposited on the suit property.
 - (iii) The court has ordered a site visit/survey report to be filed, hence as it has issued prohibitory orders, the issue of the Mandatory Injunctions as prayed for at paragraph 5 and 6 cannot be dealt with summarily, and must await the survey report.
14. Since the prayers 5 and 6 are a replica of prayer C of the suit, allowing them now, will be to determine the said aspect of the suit, summarily without the benefit of a survey/site visit report.
15. In view of the above the court declines prayers 5 and 6 of the application, but as noted in the ruling delivered on 02.03.2026, prayers 7 and 8 were allowed, as well as the site visit aspect ordered.

Dated at Kilgoris this 3rd day of March, 2026.

Hon. M.N. Mwanyale
Judge

In the presence of

CA - Sylvia/Sandra/Clara
Mr. Kere for the Applicant
Mr. Otieno for the Respondent