



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ELCLC NO. E129 OF 2025**

**ALEX KINTALEL NCHUURA**  
**EZEKIEL SIMATI NCHUURA**  
**DICKSON PARSIMEI NCHUURA**

*(Suing as the Legal Representatives of the Estate of*

**NCHUURA OLE SIMATI -**

**Deceased).....PLAINTIFFS/APPLICANTS**

**VERSUS**

**NGONG SAVINGS & CREDIT COOPERATIVE SOCIETY LTD.....1<sup>ST</sup>**

**DEFENDANT/RESPONDENT**

**THE LAND REGISTRAR KAJIADO COUNTY.....2<sup>ND</sup>**

**DEFENDANT/RESPONDENT**

**THE DISTRICT SURVEYOR KAJIADO COUNTY.....3<sup>RD</sup>**

**DEFENDANT/RESPONDENT**

**THE CHIEF LAND REGISTRAR.....**  
**.....4<sup>TH</sup> DEFENDANT/RESPONDENT**  
**THE HONOURABLE ATTORNEY GENERAL.....**  
**5<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The Applicants vide **Notice of Motion** dated **2<sup>nd</sup> October 2025** seek orders of temporary injunction and inhibition over land parcel Kajiado/Kipeto/10891, which is stated to be a subdivision of Kajiado/Kipeto/144, pending the hearing and determination of the suit.
2. The applicant also seeks an order that the 2<sup>nd</sup> and 4<sup>th</sup> Defendant be directed to avail the complete records, registers, green cards, mutation forms and all other documents relating to the history of the title from LR Kajiado/ Kisaju/72 through LR NO 138,139,143 and 144 upto the purported LR 10891.
3. The application is premised on the grounds set out in the application and the supporting affidavit sworn by the Applicants. The Applicants aver that they are the administrators of the estate of the late Nchuuria Ole Simati

(deceased) who was the registered proprietor of land parcel Kajiado/Kipeto/144 measuring 207 acres and its purported sub division Kajiado/ Kipeto/ 10891.

4. The applicants contend that the 1st Defendant's claim to ownership of Kajiado/Kipeto/10891 arises from a purported purchase transaction which is legally and factually untenable for the following reasons:

- **The alleged purchase is said to have occurred before the parcel Kajiado/Kipeto/10891 came into existence, as the land had not yet been subdivided.**
- **At the time of the alleged transaction, the suit land was jointly owned by the deceased and his brother, making it impossible for the deceased to alienate the land unilaterally.**
- **The Applicants further aver that the 1st Defendant has recently attempted to forcefully enter and take possession of the land, thereby threatening the estate's proprietary interests.**

5. It is therefore their case that unless the Court intervenes, the estate risks losing its proprietary rights over the land. The application is opposed.
6. The 1st Defendant avers that it is the lawful purchaser and registered proprietor of the suit property. In support of that claim the 1st Defendant has produced sale agreements, acknowledgement of payment, land control board consent, transfer documents and title documents.
7. The 1st Defendant therefore contends that the Applicants are improperly attempting to defeat a duly registered title through interlocutory proceedings. Both counsels filed submissions and cited authorities which the court has duly considered.
8. The only issue for determination is whether the Applicants have satisfied the principles for grant of interlocutory injunction and inhibition. The law on interlocutory injunctions is set out under Order 40 Rule 1 (a) and (b) of the Civil Procedure Rules as follows:

*“Where in any suit it is proved by affidavit or otherwise -*

(a) *That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*

(b) *That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in execution of any decree that may be passed against the defendant in the suit;*

*the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”*

9. The principles for grant of injunction are well settled by decision of **Giella Vs Cassman Brown & Company Limited [1973] E.A. 358.**, where the court stated thus:

*“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.”*

10. The Court of Appeal further elaborated the meaning of a prima facie case in *Mrao Ltd v First American Bank of Kenya Ltd* where it was stated that. “*A prima facie case is one which on the material presented shows a right which has apparently been infringed and which calls for an explanation or rebuttal from the opposite party*”

11. The Applicants challenge the root of the 1st Defendant’s title. Their argument is that the alleged purchase transaction occurred before the parcel allegedly purchased even existed and at a time when the land was jointly owned by two persons. These allegations raise questions as to the legality and procedural propriety of the acquisition of the title.

12. While the 1st Defendant has produced a title deed, the law is clear that title alone is not an absolute shield where the root of that title is challenged. The Court of Appeal in

**Munyu Maina v Hiram Gathiha Maina** held that: *“When a registered proprietor’s root of title is under challenge, it is not sufficient to merely wave the certificate of title. The proprietor must go beyond the instrument and demonstrate the legality of how the title was acquired.”*

13. These principles are codified under Section 26 of the Land Registration Act, which provides that a certificate of title may be impeached if it is shown to have been acquired through fraud, illegality or an unprocedural process. The Applicants’ allegation that the sale preceded the creation of the parcel allegedly sold raises a triable issue. This Court therefore finds that the Applicants have established a prima facie case warranting investigation at trial.

14. The Applicants have also deposed that the 1st Defendant has attempted to forcibly enter the suit property. Land has consistently been held by Kenyan courts to be a unique commodity whose loss cannot easily be compensated by damages. The Court is therefore satisfied that the Applicants stand to suffer irreparable harm if the property is interfered with before the dispute is resolved.

15. Even if the Court were in doubt, the balance of convenience would favour the preservation of the suit property pending trial. The Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & Others** emphasized that the objective of interlocutory injunctions is to preserve the subject matter of litigation pending determination of the dispute. Given the competing claims over the ownership of the suit property, the balance of convenience tilts in favour of maintaining the status quo.
16. The Court has jurisdiction under Section 68 of the Land Registration Act to issue an inhibition preventing dealings with land pending the determination of a dispute. Given the contested ownership of the property, such an order is necessary.
17. Regarding the records which the 2<sup>nd</sup> and 4<sup>th</sup> Defendant have on the suit property, it is important that the records be availed to enable the court reach a just decision. The Defendants as the custodian of the documents should at the appropriate time produce the documents.

18. In the circumstances, the Court finds that the Applicants have satisfied the threshold for grant of interlocutory relief. Accordingly, the Court makes the following orders:

**a. A temporary injunction is hereby issued restraining the Defendants, their agents or servants from entering, occupying, selling, transferring, charging or otherwise interfering with land parcel Kajiado/Kipeto 144 and Kajiado/Kipeto/10891 pending the hearing and determination of this suit.**

**b. An order of inhibition is hereby issued against land parcel Kajiado/Kipeto/10891 prohibiting any dealings with the property pending the hearing and determination of this suit.**

**c. The 2<sup>nd</sup> and 4<sup>th</sup> Defendant shall avail the complete records, registers, green cards, mutation forms and all other documents relating to the history of the title from LR Kajiado/ Kisaju/72 through LR NO 138,139,143 and 144 upto LR 10891 during the hearing of the case.**

**d. Costs shall abide the outcome of the suit.**

**Dated, Signed and Delivered virtually at Kajiado this  
5<sup>th</sup> day of March 2026.**

**JUDY OMANGE**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Akude for Mr. Orengo SC. For the Plaintiff.

Mr. Mutiso for the Defendants.

Peter - Court Assistant.