



**Nkurumwa & another (Suing as Legal Administrators of the Estate of Simpamo ole Kesike (Deceased)) & another v Estate of the Late Tinga Le Nkuito & 20 others (Environment and Land Case E014 of 2025) [2026] KEELC 1168 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1168 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**  
**ENVIRONMENT AND LAND CASE E014 OF 2025**  
**LN GACHERU, J**  
**FEBRUARY 26, 2026**

**BETWEEN**

**TUKAI OLE NKURUMWA & LEMONDOI LOE NKURUMA (Suing as  
LEGAL ADMINISTRATORS OF THE ESTATE OF SIMPAMO OLE KESIKE  
(DECEASED)) ..... 1<sup>ST</sup> PLAINTIFF**  
**RETETI OLE NKAIWATEI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**THE ESTATE OF THE LATE TINGA LE NKUITO ..... 1<sup>ST</sup> DEFENDANT**  
**NTAGUI OLE NKUITO ..... 2<sup>ND</sup> DEFENDANT**  
**PHILIP OLE NKUITO ..... 3<sup>RD</sup> DEFENDANT**  
**SAKAMO OLE NKUITO ..... 4<sup>TH</sup> DEFENDANT**  
**OLKIRIMIS OLE NKUITO ..... 5<sup>TH</sup> DEFENDANT**  
**ERICKSON JOSEPH NKUITO ..... 6<sup>TH</sup> DEFENDANT**  
**METEKAI OLE NKUITO ..... 7<sup>TH</sup> DEFENDANT**  
**TILAL OLE NKUITO ..... 8<sup>TH</sup> DEFENDANT**  
**TARIMO OLE NKUITO ..... 9<sup>TH</sup> DEFENDANT**  
**ROBERT MOKIRE OLE NKUITO ..... 10<sup>TH</sup> DEFENDANT**  
**JOHN KANYINKE OLE NKUITO ..... 11<sup>TH</sup> DEFENDANT**  
**KIKEN OLE NKUITO ..... 12<sup>TH</sup> DEFENDANT**  
**KIMURSOI OLE NKUITO ..... 13<sup>TH</sup> DEFENDANT**  
**RIANTO OLE NKUITO ..... 14<sup>TH</sup> DEFENDANT**



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|---|----------------------------|
| LEMWELS OLE NKUITO .....                | 15 <sup>TH</sup> DEFENDANT |
| PARSEN OLE NKUITO .....                 | 16 <sup>TH</sup> DEFENDANT |
| JOHNSON KOSIOM OLE NKUITO .....         | 17 <sup>TH</sup> DEFENDANT |
| JUSTUS KANTET OLE NKUITO .....          | 18 <sup>TH</sup> DEFENDANT |
| THE DIRECTOR OF LAND ADJUDICATION ..... | 19 <sup>TH</sup> DEFENDANT |
| THE CHIEF LAND REGISTRAR .....          | 20 <sup>TH</sup> DEFENDANT |
| THE HON ATTORNEY GENERAL .....          | 21 <sup>ST</sup> DEFENDANT |

## RULING

1. By an Amended Notice of Motion Application dated 4<sup>th</sup> July 2025, filed by the Plaintiffs/Applicants herein, premised under Orders 40 Rule 2, 4 of the Civil Procedure Rules, section 1A, 3A and 63(c) and (e) of the *Civil Procedure Act*, CAP 21 the Applicants have sought for the following orders: -
  - i. That pending the inter parties hearing and determination of the application, a conservatory orders be issued restraining the 19<sup>th</sup> and 20<sup>th</sup> Respondents from processing title deeds in favour of the 1<sup>st</sup> to 18<sup>th</sup> Respondents, with respect to land known as Olokurto/1839, 1840,1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855 and 1856.
  - ii. That pending the hearing and determination of the application and suit, conservatory orders restraining the 19<sup>th</sup> and 20<sup>th</sup> Respondents from processing title deeds in favour of the 1<sup>st</sup> to 18<sup>th</sup> Respondents with respect to land known as Olokurto/1839, 1840,1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855 and 1856.
  - iii. That pending the hearing and determination of this application and suit, conservatory orders be issued barring the 1<sup>st</sup> to 18<sup>th</sup> Respondents from selling, leasing, charging, transferring, subdividing, and/or in any other manner disposing of or dealing with the suit property to with land parcels known as Olokurto/1839, 1840,1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855 and 1856.
  - iv. That costs of the Application be awarded to the Petitioners/Applicants.
2. The Application is premised on various grounds stated on the face of the Application among them; that at all material times, land parcel Olokurto/425, measuring approximately 38.15Ha belongs to the Simpano Ole Kesike (deceased), Tinga Ole Nkuito(deceased), and Reteti Ole Nkaiwatei (the 1<sup>st</sup> Applicant, 1<sup>st</sup> Respondent and 2<sup>nd</sup> Applicant respectively) as proprietors in common, each holding a third equal, and have been in occupation of the said parcel of land from 1970 to date.
3. That on 22<sup>nd</sup> April 2025, upon obtaining certified copies of the adjudication record, area list, and demarcation map of the land, the Plaintiffs/Applicants discovered the existence of two versions of the adjudication record, with the second version showing the equal shareholding erased.; that by dint of the falsified adjudication record, the 1<sup>st</sup> and 2<sup>nd</sup> shall lose 45 acres out of their share of land.
4. Further, that the 1<sup>st</sup> to 18<sup>th</sup> Respondents, in collusion with Narok North Land Adjudication Officers, allegedly falsified the adjudication record by inserting content at the bottom of the page and backdating it to 2004. The Respondents then procured new land parcel numbers ranging from Olokurto/1839 to Olokurto/1854, after falsifying the adjudication record. They deponed that a forensic document



examination report dated 25<sup>th</sup> April 2025, confirmed the Adjudication Record procured by the 1<sup>st</sup> to 18<sup>th</sup> Respondents is fraudulent.

5. That the falsified Adjudication Record, submitted between 25<sup>th</sup> March 2025, and 29<sup>th</sup> April 2025, has been forwarded to the Director of Land Adjudication (19<sup>th</sup> Respondent) by the District Adjudication and Settlement Officer, Narok North Sub-County, for onward transmission to the Chief Land Registrar (20<sup>th</sup> Respondent) for processing of title deeds.
6. It was contended that the processing of these fraudulent title deeds is being fast-tracked, as evidenced by a letter from the District Adjudication and Settlement Officer, and media announcements regarding the issuance of title deeds during a Presidential tour scheduled for 6<sup>th</sup> and 7<sup>th</sup> May 2025.
7. Further, that the fraudulent Adjudication Record will result in the loss of 45 acres from their share of land. They are apprehensive that the Respondents may abuse the title deeds to acquire loans and other encumbrances, further complicating litigation and exposing the Applicants to additional risks.
8. The Applicants also fear that the Respondents may transfer the suit property to third parties to defeat their claim, as they have allegedly done before. That the Applicants conducted searches on the referred land parcels and found that not all Respondents have obtained title deeds, as indicated by the Certificates of Official Search annexed thereon.
9. The Applicants also contended that the suit is not res judicata, as previous Judicial Review Proceedings were dismissed on procedural grounds, and the appeal was dismissed due to the death of the Simpano Ole Kesike. Further, that the falsification of objection proceedings and fraudulent alteration of the adjudication record constitute a new cause of action that must be addressed by the court.
10. The Applicants alleged that no prejudice will befall the Respondents, as they have never been in occupation of the suit property, and that the orders sought are necessary to prevent the Plaintiffs/Applicants from being rendered destitute and to protect their current occupation and livelihoods.
11. The Application is also supported by the earlier Supporting Affidavit, Supplementary Affidavit of Reteti Ole Nkwaiwatei, who reiterated most of the grounds in support of this Application and urged the court to allow the same for the interest of justice.
12. The Application is vehemently opposed by the Defendants/Respondents herein, who filed their set of Replying Affidavits through S. Mogere Advocates and the Office of the Attorney General as below;
13. The 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> Defendants/respondents filed their Replying Affidavit dated 2<sup>nd</sup> June 2025 and a Further Affidavit dated 24<sup>th</sup> September 2025 sworn by Philip Laon Ole Nkuito (3<sup>rd</sup> Defendant), on his behalf and on behalf of the other Respondents in response to the Amended Notice of Motion Application, and refuted allegations that the Adjudication Record was fraudulently altered, asserting that the Adjudication Officer lawfully determined ownership in 2004.
14. The said Defendants/Respondents challenged the admissibility and reliability of the Forensic Report, citing its lack of court commissioning, expert verification, and evidentiary standards. They further alleged that the said Report failed to identify specific alterations or wrong doing by the Respondents, and they also denied allegations of impersonation during the adjudication proceedings. They emphasized that all individuals were properly identified and recorded.
15. The Defendants/Respondents argued that the Plaintiffs/Applicants failed to demonstrate which Adjudication Record influenced the ruling, and averred that the certified record remains authoritative. Further, that the subdivision of the land Cis-Mara/Olokurto/1839 -1856, was lawful executed in



- compliance with the Adjudication Officer's determination and in full compliance with Section 26(2) of the [Land Adjudication Act](#). They denied allegations of collusion with Adjudication Officials, noting the absence of evidence or complaints to the DCI.
16. The above Defendants/Respondents further averred that the outcome of Objection No. 195, was upheld in Judicial Review No. 235 of 2005, which was dismissed due to procedural issues, and that Civil Appeal No. 240 of 2008, which abated after the death of Simpano Ole Kesike, with no substitution or revival filed.
  17. Defendants/Respondents contended that the Applicants' land searches were partial and outdated, as valid titles had been issued over two years ago. It was their argument that the Applicants failed to raise objections within the statutory period, invoking the equitable doctrine of laches, and denied allegations of concealment, noting that adjudication records were publicly available and gazetted.
  18. Therefore, it was the Respondents' contention that the Applicants failed to meet the legal threshold for conservatory orders as set out in the case of *Giella vs Cassman Brown* [1973] EA 358, and argued that the allegations made by the applicants were speculative, flawed, and unsupported by evidence.
  19. The above Respondents claimed that the suit is barred under the doctrine of *res judicata*, as the issues raised were previously litigated and resolved in Judicial Review No. 235 of 2005 and Civil Appeal No. 240 of 2008. Further, that the Applicants failed to exhaust the statutory appeal mechanism under Section 29 of the [Land Adjudication Act](#), rendering the suit procedurally defective.
  20. The Defendants/Respondents emphasized that the Respondents' titles are protected under Section 26(1)(a) and (b) of the [Land Registration Act](#), as no fraud or misrepresentation has been proven.
  21. It was their further argument that the Applicants have not demonstrated any proprietary interest in the subdivided land parcels, as they have not provided ownership documents, occupation history, or adjudication claims to support their entitlement. The deponent averred that the Respondents lawfully acquired the land through the adjudication process, they have peacefully occupied and developed it, and that the adjudication process addressed individual claims rather than communal tenure.
  22. The above Defendants/Respondents argued that they would suffer irreparable harm if the Applicants' orders were granted, as it would disrupt settled titles and undermine public confidence in the adjudication and registration system.
  23. The Defendants/Respondents urged the court to dismiss the instant Notice of Motion Application since it is legally untenable, procedurally defective, and unsupported by credible evidence.
  24. The 19<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup> Defendant/Respondents filed their Replying Affidavit dated 20<sup>th</sup> January 2025 through E.N. Musembi, the Land Adjudication and Settlement Officer for Narok North, Central, and East Sub-Counties.
  25. The above Defendants/Respondents confirmed that the Olokurto Adjudication Section was formally established on 10<sup>th</sup> July 1975, under Section 5 of the [Land Adjudication Act](#), Cap 284, and that claims were invited and recorded as per Section 13(1) of the Act.
  26. It was their contention that a Land Adjudication Committee was appointed on 16<sup>th</sup> April 1975, ensuring community participation and local oversight.
  27. Further, the said Defendants/Respondents averred that the adjudication process for the Olokurto Adjudication Section was completed on 22<sup>nd</sup> August 1996, and objections were invited, heard, and determined as per Section 27 of the Act. They also averred that Objection Number 195, filed by



- Simpano Ole Kesike against Tinga Ole Nkuito and Reteti Ole Nkaiwatei, was allowed, leading to the subdivision of parcel number 425 into new parcel numbers 1839 to 1856.
28. It was their further contention that no appeal was filed against that decision, and the adjudication process was conducted lawfully and methodologically, adhering to the *Land Adjudication Act*.
  29. The above Defendants/Respondents further stated that the issuance of the Certificate of Finality for Olokurto Adjudication Section on 22<sup>nd</sup> March 1996, confirmed the completion of all procedures, including disputes resolution, paving the way for the issuance of individual title deeds.
  30. They concluded that the Application disclosed no reasonable cause of action against the said Defendants/Respondents, as the title deeds had already been processed and issued, and prayed for the dismissal of the application with costs.
  31. The Application was canvassed by way of written submissions. The Plaintiffs/Applicants filed their written submissions dated 24<sup>th</sup> November 2025, through Tuya Kariuki & Co Advocates in support of the Application and raised the following issues for determination:
    - i. Whether the Applicants have established a prima facie case with a probability of success.
    - ii. Whether the Applicants stand to suffer irreparable injury.
    - iii. Whether the balance of convenience tips in favour of granting the orders sought
    - iv. Who is to bear the costs of the application
  32. On whether the Applicants have established a Prima Facie Case with a Probability of Success, the Plaintiffs/Applicants submitted that the subdivision of the original parcel of land No Olokurto/425, was fraudulent, as evidenced by a Forensic Document Examination Report dated 25<sup>th</sup> April 2025, which indicated falsification of the Adjudication Record. They contended that the fraudulent record would result in the loss of 45 acres, of their rightful share of land. Citing the cases of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR and Mrao Ltd. v First American Bank of Kenya Ltd & 2 others [2003] KLR 125, the Applicants emphasized that a prima facie case requires evidence showing an infringement of a right and a probability of success upon trial.
  33. The Applicants argued that the subdivision of the original land parcel No. Olokurto/425, into the suit parcels Olokurto/1839 to 1856, was conducted fraudulently and adjudication record submitted by the Respondents created a high probability of success for their case.
  34. On whether the Applicants stand to suffer irreparable injury, which cannot be compensated by an award of damages, the Applicants submitted that they would suffer irreparable injury if the conservatory orders were not granted. They argued that the issuance of the title deeds to the 1<sup>st</sup> to 18<sup>th</sup> Defendants/Respondents would lead to eviction, loss of ancestral land, and financial encumbrances, which could not be adequately compensated by damages.
  35. The Applicants cited Halsbury's Laws of England and Section 63(c) of the *Civil Procedure Act*, as well as Order 40 Rule 1(a) of the Civil Procedure Rules, 2010, to support their argument that the suit property was in danger of being alienated, necessitating court intervention.
  36. On whether the Balance of Convenience tips in favour of granting the orders sought, the Applicants submitted that the balance of convenience favoured granting of the conservatory orders. The applicants argued that they have been in possession and occupation of the original parcel since 1970, and if the injunction was denied, the 1<sup>st</sup> to 18<sup>th</sup> Defendants/Respondents could use their titles to evict the Plaintiffs/Applicants or transfer the parcels to third parties, causing irreparable harm.



37. The Plaintiffs/Applicants emphasized that granting the orders sought would preserve the suit property, and prevent the 1<sup>st</sup> to 18<sup>th</sup> Defendants/Respondents from exploiting potentially fraudulent titles. The Applicants relied on the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* (Supra), to emphasize the importance of restraining actions that could render the suit nugatory.
38. On who is to bear the costs of the Application, the Applicants argued that the Respondents should bear the costs of the application, relying on Section 27 of the *Civil Procedure Act*, which grants the court discretion to award costs. They cited the case of *Ethics and Anti-Corruption Commission vs Nderitu Wachira & 2 Others* [2016] eKLR, and submitted that the Respondents' alleged fraudulent actions led to the litigation, and therefore, they should bear the costs.
39. In conclusions, the Plaintiffs/Applicants submitted that they have discharged the burden of proof required for an interlocutory injunction. It was their argument that denying the conservatory orders would allow the Defendants/ Respondents to defeat the cause of justice before the main suit is heard and determined. The applicants urged the court to exercise its inherent jurisdiction and equitable discretion to grant the conservatory orders as sought in the Amended Notice of Motion Application dated 4<sup>th</sup> July 2025.
40. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> Defendants/Respondents filed their written submissions dated 7<sup>th</sup> November 2025, through S. Mogere & Advocates, and raised the following issues for determination;
- i. Whether the Applicants have established a prima facie case with a probability of success.
  - ii. Whether the Applicants have demonstrated irreparable harm.
  - iii. Whether the balance of convenience tilts in favour of granting the injunction.
  - iv. Who should bear the costs of the application
41. On whether the Applicants have established a prima facie case with a probability of success, the above Defendants/Respondents submitted that the Applicants failed to establish a prima facie case as they do not hold title to the suit parcels, they do not occupy the said land, and lack any registered interest. Their claims of fraud and falsification of the adjudication record for parcel Olokurto/425, were deemed speculative and unsupported, as they failed to provide evidence such as the original adjudication record, forensic reports, or identification of the alleged forger.
42. While citing the following cases; *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR and *Jaswant Singh Rai vs Moses Malulu Injendi & another* [2021] KEHC 8723 (KRL) HC Milimani, the above Respondents emphasized that a prima facie case requires credible evidence of a right that has been infringed, which the Applicants failed to demonstrate.
43. On whether the Applicants have demonstrated irreparable harm, the Respondents submitted that the Applicants did not show any real or imminent injury that could not be compensated by damages. It was their submissions that the Applicants do not occupy the suit parcels of land, and have not been evicted, and have not demonstrated any interference with their livelihood or proprietary interest.
44. For the above submissions, the above Respondents cited the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and *Kenya Breweries Limited & Another v Washington O. Okeyo* [2002] eKLR, which established that irreparable harm must be substantial, real, and incapable of being remedied by damages. The Respondents argued that the Applicants' claims of harm were deemed hypothetical and theatrical.



45. On whether the balance of convenience tilts in favour of granting the injunction, the above Respondents argued that the balance of convenience favoured maintaining the status quo, as they are the registered proprietors of the land parcels No.Cis-Mara/Olokurto/1839 to Cis-Mara/Olokurto/1856, which were acquired through a lawful adjudication process, and they have occupied and developed the said parcels of land peacefully.
46. It was their further submissions that the Applicants, on the other hand, do not occupy the suit land, do not hold title, or possess any registered interest. Citing the cases of Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 Others [2016] eKLR and Kenya Power & Lighting Co Ltd v Benzene Holdings Ltd t/a Wyco Paints [2016] eKLR, the Respondents emphasized that injunctions should not disrupt settled rights or lawful possession.
47. On who should bear the costs of the Application, the above Respondents argued that the Applicants should bear the costs of the Application, as they failed to meet the legal threshold for grant of injunctive relief and concealed material facts from the court. Citing the case of Premchand v Estate of Said Juma [2015] eKLR and Republic v Minister for Agriculture & 2 Others Ex Parte W'njuguna [2006] eKLR, the Respondents submitted that costs are awarded to compensate the successful party for their efforts in defending a suit and should not reward procedural neglect or delay.
48. The above Respondents contended that granting the injunction would disrupt settled titles, reward delay, and undermine public confidence, in the adjudication process. They urged the court to dismiss the instant Application in its entirety and award costs to them.
49. The 19<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup> Defendants/Respondents, filed their written submissions dated 19<sup>th</sup> January 2026, through C.N Menge, Deputy Chief Litigation Counsel, and submitted that the Applicants failed to challenge the Adjudication process through lawful channels, and that allegations of fraud and falsification were unsupported by any tangible evidence. It was their further submissions that that the court should dismiss the Plaintiffs/Applicants allegations outrightly, as the Applicants did not report the alleged fraud to the Police, which is a criminal matter.
50. The above Defendants/Respondents set out the issues for determination as follows:
  - i. Whether the Applicants have established a prima facie case with a probability of success.
  - ii. Whether the Applicants have demonstrated irreparable harm.
  - iii. Whether the balance of convenience tilts in favour of granting them an injunction.
51. On the first issue, the above Defendants/ Respondents submitted that the Plaintiffs/Applicants failed to demonstrate ownership of the suit property, as they do not possess a title deed or occupy the land. Their claim is based solely on allegations of falsification of the Adjudication Record for Land Parcel No. Olokurto/425.
52. Regarding the second issue, the said Defendants/Respondents argued that the Plaintiffs/Applicants did not meet the threshold for the grant of conservatory orders, which are meant to preserve the status quo of a matter until the suit is heard and determined.
53. The referred Defendants/Respondents cited the case of David Ndii & Others vs Attorney General & Others [2021] eKLR, where the court held that conservatory orders are granted to preserve the substratum of a Petition when there is a threat of constitutional violation.
54. The Respondents further referred to the case of Njagi Zacharia Mwaniki vs Ndiga & 3 Others [2023] KEHC 9563 and Board of Management of Uhuru Secondary School vs City County Director of



- Education & 2 Others [2015] eKLR, which summarized the principles for granting conservatory orders, including demonstrating a prima facie case, showing irreparable harm, ensuring the Petition is not rendered nugatory, and considering public interest.
55. They also relied on the Supreme Court case of *Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others* [2014] eKLR and *Nairobi Civil Appeal 151 of 2011 Invesco Assurance Co. Ltd vs MW (Minor suing through next friend and mother HW)* [2016] eKLR, which cases defined conservatory orders and their purpose of preserving the subject matter until the suit is heard and determined.
56. On the third issue, the above Defendants/Respondents submitted that the Applicants failed to establish a prima facie case with a high probability of success, as the Applicants do not possess any registrable interest in the suit properties and their claims are based on allegations of fraud.
57. The said Defendants/Respondents argued that the adjudication process for the Olokurto Adjudication Section was conducted lawfully, and no appeal was filed against the decisions made during the process. The said Defendants/Respondents further submitted that the Plaintiffs/Applicants failed to produce original Adjudication Records to counter the alleged falsified records.
58. In conclusion, the above referred Defendants/ Respondents submitted that the Plaintiffs/ Applicants do not deserve the conservatory orders sought, as they failed to meet the required principles for granting such orders. They urged the court to dismiss the instant Amended Notice of Motion Application dated 4<sup>th</sup> July 2025 in its entirety, with costs.
59. The above are the pleadings in respect of the instant Amended Notice of Motion Application, the arguments for, and against the grant of the orders sought, and the rival written submissions in support, and against the said application, which this court has carefully read and considered. The issue on determination is whether the Plaintiffs/Applicants are entitled to the prayers sought in their Amended Notice of Motion Application.
60. The Applicants have sought for Conservatory Orders, and this being a suit initiated vide a Plaint, the court will presume, the Plaintiffs/Applicants are seeking for injunctive orders, which are equitable reliefs granted at the discretion of the court. See the case of *Filista Chemaiyo Sosten vs Samson Mutai* (2012) eKLR, where the court stated thus:
- “In *James Juma Muchemi & Partners Ltd vs Barclays Bank of Kenya & Another* (Nairobi HCCC No.339 of 2011 (2012) eKLR, the court expressed itself as follows; jurisdiction under Order 40 Rule 2 was discretionary, and like in all other discretions, the same must be exercised judiciously”
61. However, this discretion must be exercised judiciously, while ensuring the end of justice has been met. See the case of *Aitken v. Eldoret Municipal Council* (2004) 1 KLR 306.
62. The Amended Notice of Motion is anchored under Order 40 Rule 2 and 4 of the Civil Procedure Rule and Section 63(c) of the *Civil Procedure Act*, which deals with injunctive orders. These injunctive reliefs are equitable remedies granted by courts to compel a party to do or refrain from doing specified acts, and they are basically aimed at preventing irreparable harm and maintaining the status quo. These reliefs are rooted in the *Civil Procedure Act* in Section 63 of the said Act and Order 40 of the Civil Procedure Rules, which the Applicants herein have relied on.
63. Order 40. Rule 1 of the Civil Procedure Rules provides;
1. 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 is 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 the 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.
64. Therefore, for a court to grant the injunctive orders, the Applicant has to prove that there is danger of the suit land being wasted, alienated and/or disposed of as provided by the above provision of law. This is because the purpose of temporary or interlocutory injunction is to preserve the status quo until a final decision is made. They are meant to prevent wasting, damaging or disposal of a property in dispute until the same is resolved. See the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (2014) eKLR.
  65. Further, before a court issues injunctive orders, it will be careful not to delve into the issues in controversy, which are subject of the main suit. The court should caution itself not to determine the issues in dispute with finality through Affidavit evidence. See the case of *Mbuthia v Jimba Credit Corporation Ltd. & Another* (1988) KECA 116 (KLR).
  66. All that the court is required at this interlocutory stage is to determine whether or not the Applicants are entitled to the prayers of injunctions as sought, based on the usual criteria. See the case of *Edwin Kamau Muniu vs. Barclays Bank of Kenya Ltd* (2002) KLR, where the court states its role during the interlocutory stage, is that it is not required to determine the final issues of the trial at that interlocutory stage. Instead, its only duty is to decide if the Applicant is entitled to the injunction order as sought, based on the "usual criteria" of *Giella v Cassman Brown* (supra).
  67. As submitted by the parties herein, the principles to be considered in an Application for injunction were well set out in the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, which is a landmark case requiring an Applicant to:-
    - i). Show that they have established a prima facie case, which is strong enough to proceed to trial.
    - ii). Demonstrate that they are likely to suffer irreparable harm, which is significant and non-monetary in the sense that the Applicant cannot be compensated in a monetary award if the injunction is not granted.
    - iii). Demonstration of a balance of convenience in the sense that if there is a doubt in regard to the first two conditions, the court will consider which party would suffer more from either granting or denying the injunction.
  68. From the available evidence, have the Plaintiffs/Applicants herein demonstrated the above principles, bearing in mind the caution, that the court should not delve into and determines with definitive the substantive disputed facts, based on the Affidavits evidence.
  69. There is no doubt that the initial suit land herein *Cis Mara/Olokurto/425*, was initially owned by *Simpano Ole Kesike*, *Tinga Ole Nkuito* both deceased and *Reteti Nkaiwatei*, holding the suit land in common in equal shares of a third of the share each. It is evident that an objection No 195 was raised by *Simpano Ole Kesike* (deceased) which ended up in a Judicial Review Misc No 235 of 2005, at Nakuru



High Court, which had been filed by Simpano Ole Kesike( deceased). The said Judicial Review was dismissed vide a Ruling of 17<sup>th</sup> November 2006.

70. The Plaintiffs/Applicants have averred that they have been made aware of existence of two versions of adjudication records, wherein the 1<sup>st</sup> to 18<sup>th</sup> Respondents falsified the 2<sup>nd</sup> Adjudication Record, so that the Plaintiffs/Applicants were to get 45 acres less out of the suit land, or the estate of Tinga Ole Nkuito is to set 45 acres more from the suit land.
71. The Plaintiffs/Applicants alleged that this fraudulent record and falsification was done by the Defendants/Respondents, and new title deed are being fast tracked, and the Applicants are apprehensive that if no restraining orders are issued, then the title deeds will be issued, and the Respondents may alienate, dispose off or waste the suit land before the main suit is heard and determined, and thus this Application.
72. On their part, the Respondents have denied the allegations made by the Plaintiffs/Applicants, and did aver that the alleged title deeds were issued long time ago, after the adjudication of the suit property. The 1<sup>st</sup> to 18<sup>th</sup> Respondents attached copies of Certificates of search to confirm that the subdivision was done as way back as 2017, and only the title deeds had remained to be issued which were issued on 8<sup>th</sup> May 2025.
73. The Respondents denied any existence of two versions of Adjudication Records. The Plaintiffs/Applicants have alleged, and the Defendants/Respondents have denied. For the court to establish whether there are two versions of Adjudication Records, evidence has to be called, and this can only be done in the main trial, where witnesses will be called, and the veracity of their evidence will be tested through the usual cross examination.
74. With the above allegations, and the denial by the Defendants/Respondents, the court finds that the plaintiffs/Applicants have not established a prima facie case, with probability of success as described in the case of Mrao Ltd v First American Bank of Kenya & 2 Others, [2003] KLR 125, where the Court of Appeal held;

“In civil cases, a prima facie case is a case in 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 to call for an explanation or rebuttal from the latter”
75. It is evident that the issue of existence of fraudulently acquired adjudication record can only be resolved by calling sufficient evidence by the parties who have alleged, which parties are the Plaintiffs/Applicants as provided by Section 107 and 109 of the *Evidence Act*.
76. For the above reasons, the court finds and holds that the Plaintiffs/Applicants have not established a prima facie case with probabilities of success at the trial, or at the first instance.
77. On the second limb of whether the Applicants will suffer irreparable harm, which cannot be compensated by an award of damages, the Plaintiffs/Applicants are apprehensive that the issuance of the title deeds to the 2<sup>nd</sup> to 18<sup>th</sup> Defendants/Respondents, might result in them selling the resultants subdivisions to the detriment of the Plaintiffs/Applicants.
78. At the centre of the dispute is the 45 acres that were allegedly awarded to Tinga Ole Nkuito (deceased), who was one of the proprietor of Olukorto 425, and which 45 acres have allegedly been subdivided and titles issued to the 2<sup>nd</sup> to 18<sup>th</sup> Defendants/Respondents, who are related to the estate of Tinga Ole Nkuito.



79. The Respondents averred that there is no danger of eviction of the Plaintiffs/Applicants who have never been in occupation of the suit parcels of land. The Plaintiffs/Applicants have not denied that they are in possession of the other portion of Olukurto/425, which is not in dispute. The Applicants did not avail any evidence that the suit parcels are exactly situated where they reside. There is no evidence of any eviction notices issued by the Defendants/Respondents to confirm that there is any threat; no evidence that the Plaintiffs/Applicants reside on the suit parcels, and there is a danger of their eviction from the suit land.
80. On whether the Plaintiffs/Applicants are entitled to be on the 45 acres of land, that would have to await the calling of evidence at the main trial. At this juncture, there is no evidence of threat of the Plaintiffs/Applicants' possession of their respective portions of land, which are different from the 45 acres in dispute. Therefore, the Plaintiffs/Applicants have not established that in the absence of injunctive orders, they will suffer irreparable harm which cannot be compensated by an award of damages. See the case of Pius Kipchirchir Kogo vs. Frank Kimeli Tenai (2018) eKLR.
81. Consequently, on the second limb, the court finds and holds that the Plaintiffs/Applicants have not established that they will suffer irreparable harm, which cannot be compensated by an award of damages as held in the case of Paul Gitonga Wanjau vs. Gathithu Tea Factory Company Ltd & others [2016] eKLR.
82. On the third limb, where the court is in doubt to determine the matter on a balance of convenience, this court finds that it is not in doubt, and if even it was, it would be minded to decide that the status quo be maintained. The status quo herein is not to issue any injunctive or restraining orders. In any event, if after the main trial the court is to find in favour of the Plaintiffs/Applicants, it will not hesitate to cancel the allegedly illegally acquired titles, and return the suit land to its original state.
83. In the instant matter, the court has chosen to go for the lower risk, rather than the higher risk as was held in the case of Amir Suleiman vs. Amboseli Resort Limited [2004] eKLR, and the English case of Films Rover International Ltd vs. Cannon Film Sales Ltd [1987] 1 WLR 670, where the court took a view that in considering to grant injunctive relief on a balance of convenience: "A fundamental principle of...is that the Court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong'..."
84. Being guided as above, the court finds the lower risk herein is not to grant any injunctive orders, which orders are not tenable for now, given that a Judicial Review Misc. Application over the same parcel of land had been dismissed by Nakuru High Court in 2006.
85. Consequently, having carefully considered the instant Amended Notice of Motion dated 4<sup>th</sup> July 2025, the court finds it not merited, and the same is dismissed entirely with costs being in the cause.
86. Let the parties prepare the main suit for hearing expeditiously by complying with Order 11 within the next 21 Days from the date hereof, so that the issues in dispute are resolved once and for all.
87. Parties are also encouraged to promote and/or attempt Alternavie disputes resolution (ADR) in this matter given that initially the three proprietors were holding the suit land in common.

Application is dismissed accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 26<sup>TH</sup> DAY OF FEBRUARY 2026.**

**L. GACHERU**

**JUDGE**



Delivered online in the presence of

Elijah Meyoki - Court Assistant

Ms Mwaluko h/b for Mr Tuya for the Plaintiffs/Applicants

Ms Mogere for 2<sup>nd</sup> to 18<sup>th</sup> Defendants/Respondents

Mr Menge for 19<sup>th</sup> to 21<sup>st</sup> Defendants/Respondents

**L. GACHERU**

**JUDGE**

**26/02/2026.**

