

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC NO. E110 OF 2025

VIOLET CAROLINE AKOTH
OKECH.....PLAINTIFF/APPLICANT

-VERSUS-

SIMON MALOI.....1ST
DEFENDANT/RESPONDENT

MATTHEW MALOI.....2ND
DEFENDANT/RESPONDENT

JERIMIAH MALOI.....3RD
DEFENDANT/RESPONDENT

RULING

(In respect of the Plaintiff's Motion dated 22nd August, 2025 seeking an order of temporary injunction)

Introduction

1. The Plaintiff/Applicant through her Motion dated 22 August, 2025 which is brought under the provisions of Article 159(2)

(d) of the Constitution, Section 1A, 1B and 3A of the Civil procedure Act and Order 40 of the Civil Procedure Rules seeks for the following orders;

(1) Spent

(2) Spent

(3) Pending the inter parties hearing and determination of the main suit, temporary injunction be issued restraining the Defendants/Respondents, their servants, agents, representatives or assignees from trespassing, disposing, alienating, transferring or any other way interfering with the Plaintiff's ownership and use of the property known as Title No. KAJIADO/KAPUTIEI NORTH/32202.

(4) An order directing the Officer Commanding Station (OCS), Isinya, to supervise and ensure enforcement of the orders issued in (2) & (3) above.

(5) That the costs of this application be in the cause.

2. The Application is supported by the affidavit of Violet Caroline Akoth Okech sworn on 22nd August, 2025 who asserts that

ensuing her purchase of **KAJIADO/KAPUTIEI NORTH/32202** from Daniel Rotiken, the property was subsequently transferred and registered in her name. The Plaintiff claims that her licensed surveyor and agent did not manage to demarcate the suit property as she had instructed in July, 2025 because the Defendants violently confronted them, forcibly chased them away and later on reported the matter at Isinya Police station. According to the Plaintiff, the Defendants unlawful, fraudulent and malicious actions amounts to trespass and was intended at interfering with her proprietary rights. This is because the Plaintiff had been informed by Daniel Rotiken that he lawfully acquired the suit property from the Defendants as evidenced in the official search undertaken prior to the purchase. The Plaintiff decries that if the orders sought are not granted, she will suffer substantial and irreparable harm because the Defendant will dispose of the suit property hence prejudicing her rights and rendering the suit a nugatory.

Defendants case

3. The Application is opposed by the Defendant through the Replying Affidavit of **Simon Maloi** sworn on 24 October, 2025 who deposes that the Defendants are brothers and biological

sons of Maloi Sintamei Seger who passed on in 8th October, 2021 and that the disputed property is part of the estate of their father. Following his death, they instituted succession cause proceedings before the High Court Succession Cause No. HCFP & A/3/2020. Through a grant of letters of administration dated 24 April, 2024, the 1st and 3rd Defendants were appointed the lawful administrator of their father's estate.

4. According to the Defendants, no lawful transfer with respect to the suit land arising from the deceased estate has ever been concluded because its awaiting final distribution and confirmation of grant in the succession cause. The Defendants further allege that the family has never sold the disputed property to the Plaintiff nor to the alleged Daniel Rotiken. Following the demise of their father, they have continuously cared, protected and preserved the suit property wherein they live and have had its legal possession for the benefit of the lawful heirs as they await conclusion of the succession cause. The Defendants accuse the Plaintiff of failure to enjoin Daniel Rotiken in these proceedings and annex a properly executed sale agreement, transfer instrument, proof of payment and land control board consent to verify the alleged sale and

support transfer of the suit property from the deceased's estate to her. It is asserted that this deliberate and material omissions deny this court an opportunity to test the documentary trail accompanying legitimate transfer, if at all.

5. The Defendants allege that any purported transfer of the suit property by Daniel Rotiken is irregular, void, and fraudulent for he lacked the legal authority to alienate, transfer and dispose of the suit property. The Defendants dismiss the Plaintiff's complaint lodged at Isinya Police station by averring that criminal proceedings have never been instituted against them with respect to the alleged assault. It is the Defendants' case that they confronted the Plaintiff agents when they trespassed onto the suit property and failed to produce any authority. They were requested to leave the property without infliction of any violence. Additionally, this information was relayed to the area chief notifying him of strangers trespassing and walking onto the Defendants' vast land.

6. The Defendants maintain that the Plaintiff's title was illegally processed and obtained for it was issued before beacons and survey demarcation. Further, the Plaintiff's assertion of exclusive rights over the suit property based on supposedly

registered title constitutes attempts to pre-empt lawful administration of the deceased's estate since the Plaintiff has not produced proof of payment of stamp duty, clearance of caveats on suit property, beacons certificate, survey reports or any other documentary pre-conditions showing that lawful registration was complied with as at the time the suit property's title was registered in her name.

7. The Plaintiff assertions that the Defendants seek to dispose of the suit property and commence permanent development therein are dismissed and termed as speculative because the Defendants intend to preserve it for the succession proceedings and all the lawful beneficial owners. It is asserted that if the court proceeds to issue the order sought, it will fetter the Defendants' interest to care and preserve the suit property awaiting conclusion of succession proceedings and inflict irreparable prejudice. Additionally, no judicial protection should be afforded the Plaintiff who has relied on irregular processes to obtain title to the suit property. The Defendants pray for dismissal of the application with costs terming it misconceived, premised on falsehood, material omissions and irregular documents.

Plaintiff's Further Affidavit

8. Through a further Affidavit sworn on 3 December, 2025, the Plaintiff responded to the Defendants' case by alleging that she was not aware of the succession cause proceedings. According to the Plaintiff, the succession proceedings are null and void initio because at as the time they were filed in 2020, the suit property was not registered in deceased's name neither would it have formed part of his estate. The Plaintiff contend that the Defendants only challenged the validity of her title and that of Daniel Rotiken when they trespassed on the suit property despite being aware it was not registered in deceased's name. With respect to the issue of failure to annex her duly executed agreement, the Plaintiff responds by asserting that this issue will be clarified once Daniel Rotiken testifies in support of her case for the transfer and acquisition of her suit property is not disputed.
9. It is the Plaintiff case that survey and demarcation of the suit property was conducted at the time of purchase. The Plaintiff maintains that she is deserving of the orders sought for she has proven that she has rights and interests of over the suit property. According to the Plaintiff, the suit property ought to

be preserved because the issues relating to legality and acquisition of title shall be determined at the trial.

Court's directions

10. The court directed that the application be canvassed through written submissions. This directive was fully complied with by counsel for the parties. I have considered the rival submissions which further advances the respective positions of the parties.

Issues for Determination

11. The singular issue for determination after careful examination of the application, affidavits on record as well as detailed submissions by learned counsel for the parties is *whether the Plaintiff has established a case to warrant issuance of an order of temporary injunction pending hearing and determination of the main suit.*

Analysis and Determination

12. Undoubtedly, the Plaintiff's application is an interlocutory application which Cotton LJ, in the case of **Gilbert -vs- Eden (1878) 9 Ch. D,** defined as;

“Those applications which do not decide the rights of parties, but are made for purposes of keeping things in status quo till the rights (of parties) can be decided or for purposes of obtaining some directions of the court as to how the cause is to be conducted as to what is to be done in the process of cause for purpose of enabling the court ultimately to decide upon the rights of the parties”

13. Closer home, Ringera J, (as he then was) in the case ***Airland Tours and Travel Limited -versus- National Industrial Credit Bank, Nairobi HCCC 1234 of 2002,*** emphasized that an interlocutory application the court is not required to make any conclusive or definite findings of fact or law on the basis of the contradictory affidavit evidence or disputed propositions of the law.
14. The law is well settled on the considerations that the court must take into account in an application for an interlocutory injunction as laid down in ***Giella -vs- Cassman Brown & Co. Limited (1973) EA 358;***

“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.”

15. Parties have submitted at great length on the principles for the grant of an order of an interlocutory injunction. Off court the first consideration is whether the Applicant has established a prima facie case.

16. The ***Court of Appeal*** in the case of ***Nguruman Limited - vs- Jan Bonde Nielson & 2 others (2014) eKLR***, had this to say about a prima facie case,

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be directly threatened by an act sought to be restrained, the invasion of the right has to be

material and substantive, and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini-trial and must not examine the merits of the case closely. All that the court is to see is than on the face of it the person applying for an injunction has a right to which has been or is threatened with violation. Positions of the parties is not to be proved in such a manner as to give a final decision in discharging a prima facie case. The Applicant need not establish title it is enough if he can show he has a fair and bona fide question to raise as to the existence of the right which he alleges”.

17. The Plaintiff has exhibited a title in her name. The Respondents question the legality of the Plaintiff’s title. They assert that the Plaintiff’s claim is premised on the purported title whose acquisition process is unexplained and whose existence is incompatible with the mandatory provisions of the ***Law of Succession Act and the Land Registration Act.***

They therefore submit that without a lawful root of title, the Plaintiff cannot demonstrate the existence of any right capable of protection.

18. Going by the holding in the Nguruman case however, at this stage all that this court is expected to see is that on the face of it the Applicant seeking an order of interlocutory injunction has a right which has been or is threatened with violation without going deep into the merits of the case. It is impossible for the court at this juncture relying on the contradictory affidavit evidence presented by the parties to establish the legality or otherwise of the Plaintiff's title. That must wait for the hearing, where the evidence will be tested through cross-examination and or countered with other evidence.

19. The court is satisfied that the Plaintiff has a bona fide question to raise as to the existence of the right which she alleges.

20. The 2nd question for the court to consider is whether the Plaintiff has established that she might otherwise suffer irreparable injury which cannot be adequately remedied by

damages in the absence of an interlocutory injunction. In Nguruman case the Court of Appeal stated that an Applicant must demonstrate the nature and extent of injury. Speculative injury will not do.

21. Warsame Judge (as he then was), in the case of **Joseph Siro Mosiana -vs- HFCK & 3 others (2008) eKLR**, cautioned that a party should not be condemned to take damages in lieu of his crystallized right which can be protected by an injunction. The financial strength of the Respondent is not always a factor to refuse an injunction.

22. Odunga Judge (as he then was) on his part in the case of **JM-vs- SMK & 4 Others (2022) eKLR**, tacitly observed that,

“The court is also, by virtue of Section 1A(2) of the Civil Procedure Act enjoined to give effect to the overriding objective as provided under Section 1A(1) of the said Act in exercising the powers conferred upon it under the Civil Procedure Act or in the interpretation of any of its provisions. One of the aims of the said objective as interpreted by the Court of Appeal is the need to ensure equality of

arms, the principle of proportionality and the need to treat all parties coming to court on equal footing”.

23. The Defendants have disclosed the existence of a succession cause where the suit property is listed as one of the properties of the estate. There is a real risk of it being distributed before the determination of the issue of ownership further convoluting the issues. The jurisdiction to determine the issue of ownership of the suit property is vested in this court under the provisions of article 162(2)(b) of the Constitution.

24. This court is persuaded that the Plaintiff has surmounted the 2nd hurdle for the grant of an interlocutory injunction.

25. There is also the consideration of the balance of convenience. I agree with the decision in **Pius Kipchirchir -vs- Frank Kimeli Tenai (2018) eKLR**, on the meaning of the balance of convenience. The court held that,

“The meaning of balance of convenience in favour of the Plaintiff is that if an injunction is not granted and the suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff

would be greater than that which would be caused to the Defendants if an injunction is granted but ultimately dismissed. Although it is called the balance of convenience, it is really the balance of inconvenience, and it is for the Plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the Defendants. In other words, the Plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it”.

26. In light of the foregoing, the balance of convenience is in favour of the Plaintiff. The inconvenience that would be caused to the Plaintiff would be greater than that which may be caused to the Defendants if an injunction is granted but ultimately dismissed.

27. Consequently, the court is persuaded that the Plaintiff has met the conditions for the grant of an order of interlocutory injunction, which is hereby granted in the following terms;

A. Pending the determination of the main suit, an order of temporary injunction be and is hereby issued restraining the Defendants/Respondents, their servants, agents, representatives or assignees from disposing, alienating or transferring the property or assignees from trespassing, disposing, alienating, transferring or in any other way interfering with the Plaintiff's ownership of the property known as KAJIADO/KAPUTIEI-NORTH/32202.

B. The Plaintiff too is restrained from disposing, alienating, or transferring the property known as KAJIADO/KAPUTIEI-NORTH/32202, pending the hearing and determination of the main suit.

C. The Officer Commanding Station (OCS), Isinya, is directed to ensure compliance of the above orders.

D. The costs of the application to be in the cause.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 26th Day of February 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Ms. Ogolla h/b for Mr. Katunga Mbuvi for the Respondents

Mr. Maina for the Plaintiff/Applicant

Court Assistant: Mpoye

M.D. MWANGI
JUDGE

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