



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO.

ELCLC CASE NO. E140 OF 2025.

KIPARIAN MUSANKA ENE KOYO.....

PLAINTIFF

VERSUS

BENSON KUNTE MUSANKA.....1ST

DEFENDANT

BENJAMIN TIPTIP MUSANKA.....2ND

DEFENDANT

ANTONY MOTE MUSANKA.....3RD

DEFENDANT

THE DEPUTY COUNTY COMMISSIONER, KAJIADO CENTRAL

SUB-

COUNTY.....

.....4TH DEFENDANT

AND

THE DISTRICT SURVEYOR - KAJIADO.....1ST INTERESTED PARTY

THE OFFICER COMMANDING STATION (OCS), KAJIADO

POLICE

STATION.....2ND

INTERESTED PARTY

RULING

1. The Plaintiff vide a Plaint dated 14th October 2025 has sought various orders in respect of Kajiado/ Dalaletuk 14010. She avers that she is the lawful registered owner and has been in peaceful occupation of the suit property. That the 1st to 3rd Defendant have entered the suit property without her authority and caused mayhem therein.

2. She therefore seeks the following orders;

1. A declaration that the Plaintiff, Kiparian Musanka Ene Koyo, is the lawful and absolute proprietor of Land Parcel No. KJD/DALALEKUTUK/14010, entitled to peaceful and exclusive possession, occupation, and use thereof.

2. A permanent injunction restraining the 1st, 2nd, 3rd, and 4th Defendants, their servants, agents, employees, relatives, or any other persons acting under their direction from:

- a) Entering, trespassing, or remaining on the Plaintiff's property;**
- b) Harassing, threatening, or assaulting the Plaintiff or her workers;**
- c) Arresting or intimidating the Plaintiff's employees or contractors;**
- d) Interfering in any manner with the Plaintiff's farming, sand harvesting, water access, or other economic activities on the land.**

3. A declaration that the 4th Defendant's conduct amounts to abuse of public office, bias, and violation of constitutional rights.

4. An order directing the District Surveyor, Kajiado to undertake a boundary survey and delineation of Land Parcel No. KJD/DALALEKUTUK/14010, and file a report in this

Honourable Court within sixty (60) days.

5. An order directing the OCS Kajiado Police Station to enforce and supervise compliance with the Court's orders, and to ensure the protection and safety of the Plaintiff, her family, and her workers.

6. A declaration that the conduct of the 1st, 2nd, 3rd, and 4th Defendants constitutes gender-based discrimination, abuse of office, and violation of the Plaintiff's constitutional rights to property, dignity, equality, and security of person.

7. A declaration that the actions of the Defendants constitute gender-based discrimination, abuse of authority, and violation of the Plaintiff's

constitutional rights under Articles 27, 28, 29, and 40 of the Constitution.

8. General damages for trespass, harassment, intimidation, discrimination, and violation of constitutional rights.

9. Costs of this suit and interest thereon at court rates.

10. Any other or further relief that this Honourable Court may deem just and expedient to grant.

3. The 1st Respondent in the Replying Affidavit avers that the suit property was fraudulently registered on paper in the name of the Plaintiff who is his step mother. That the sub division was only done on paper as on the ground all the parties are living on the suit property. He avers that the Plaintiff is using the suit property for her own benefit.

4. The 4th Respondent too filed a detailed affidavit in which he insisted that there is no reasonable cause of action against him.

5. Counsel made oral arguments in court. Arising from the submissions and the pleadings the sole issue for

determination is whether the court should grant the orders sought.

6. The law on grant of 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.”

7. The principles for grant of injunction are well settled by the locus classicus 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.”

8. This court is thus required to determine whether the applicant has satisfied the three conditions for grant of injunction. In **Nguruman Limited Vs Jan Bonde Nielsen & 2** the Court of Appeal had this to say on 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 protected which is 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”

9. In the instant case both parties agree that the suit property is registered in the name of the Plaintiff. The Defendants contention that all the parties also reside on the suit property which belonged to their father is not rebutted. The family relationship between the parties is not disputed. It is also evident that there have been skirmishes on the suit property.
10. At this interlocutory stage I am unable to find that one party has a priority over the other. This is an issue that will only be determined after hearing the evidence. In the meantime, even in the absence of proof of a prima facie case by either of the parties, there is need to ensure that none of the parties interfere with each other before the matter is heard. This calls for maintenance of the status quo before the matter is heard.
11. The courts have held that even where the elements for grant of an injunction are not met, the court in the interest of

preserving the substratum of the suit can give a status quo order.

12. Justice Murithi J in the case of **Mombasa Misc. Civil Application (JR) No.26 of 2010 Republic -vs- The Chairperson Business Premises Rent Tribunal at Mombasa (Bench Mochache) Exparte Baobab Beach Resort (Mombasa Limited) & Monica Clara Schriel** sought to draw the distinction and opined: *“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or*

the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.” (see in The Matter of an Application By Saifudeen Abdullabhai & 4 Others For Leave To Apply For Judicial Review And For Orders Of Certiorari And Prohibition [2013] eKLR).

13. Issuing a Status Quo order will preserve the substratum of the suit while the matter is being heard. Consequently the court issues the following orders;

a. Status quo on possession and title is to be maintained pending the hearing and determination of the suit.

b. For avoidance of doubt it is directed that both parties ensure compliance and should not interfere.

c. The costs shall abide the outcome of the main suit.

**Dated, Signed and Delivered virtually at Kajiado this 12th
day of March 2026.**

JUDY OMANGE

JUDGE.

IN THE PRESENCE OF:

Ms. Katau for Mr. Mukeli for the 1st to 3rd Respondents.

Mr. Muoki for Mr. Lesinko for the Plaintiff.

Peter – Court Assistant.