



Aiyabei v Stecol Corporation Limited (Environment and Land Case E001 of 2026) [2026] KEELC 1820 (KLR) (23 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1820 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND CASE E001 OF 2026**

**BN OLAO, J
MARCH 23, 2026**

BETWEEN

JULIANA KABON AIYABEI APPLICANT

AND

STECOL CORPORATION LIMITED RESPONDENT

RULING

1. Juliana Kabon Ayabei (the Plaintiff herein and acting as the Administrator to the estate of the late Cheboi Suter alias Cheboi Arap Kiplele) filed this suit on 8th January 2026 in which she sought Judgment against Stecol Corporation Ltd (the Defendant) as follows with respect to the suit land Lelan/Kaptalama/48:
 - a. A declaration that the Defendant's entry and activities on the suit land amounts to trespass and unlawful intermeddling with the estate of the deceased.
 - b. A permanent injunction restraining the Defendant, its agents, employee or contractors from occupying, extracting or dealing with the suit land.
 - c. A mandatory injunction compelling the Defendant to vacate the suit land and remove all machinery, equipment and personnel.
 - d. An order for full account and inventory of all stones, ballast and materials extracted from the suit land.
 - e. Compensation, damages for the value of the extracted materials, loss of use, conversion and environmental degradation.
 - f. General damages for trespass.
 - g. Mesne profits until vacant possession is delivered



- h. Costs of the suit and interest.
 - i. Any further relief that this Honourable court deems fit to grant.
2. The basis of the Plaintiff's claim is that at all material time, the suit land is the property of the late Cheboi Suter alias Cheboi arap Kiplele (herein after the deceased) whose estate the Plaintiff is the Administrator. That sometime in 2025 and without any colour of right, consent, license or authority, the Defendant unlawfully entered thereon, stationed machinery and has commenced harvesting and excavating murrum and stones. This amounts to trespass and intermeddling with the estate of the deceased. Intervention by the Local Administration has borne no fruits as the estate continues to suffer loss hence this suit.
 4. The Defendant is yet to file a defence.
 5. Simultaneously with the plaint, the plaintiff filed a Notice of Motion citing the provisions of Section 3A and b 3 (c) of the Civil Procedure Act as well as Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules. She seeks the following orders:
 1. Spent
 2. An order of temporary injunction do issue restraining the Defendant by themselves, their servants and/or agents or any other representative whatsoever from entering, trespassing, alienating or dealing with the suit land measuring 36.8 hectares pending the hearing and determination of this application.
 3. An order of injunction do issue restraining the Defendant by their servants and/or agents or representative from entering, trespassing, alienating and/or dealing with the suit land pending the hearing and determination of this application.
 4. The OCS Kaptalamwa Police Station or any other nearby Police Station within the Jurisdiction be directed to ensure enforcement of the orders granted by this Honourable Court.
 5. The costs of this application be provided for.
 6. The Motion is supported by the Plaintiff's affidavit dated 7th January 2026 and is based on the grounds set at therein.
 7. There is an error in the Motion which essentially in prayer No. 3 must have meant pending the hearing and determination of the suit. I invoke Article 159 of the Constitution to treat it as such.
 8. The gravamen of the Motion is that the Plaintiff is the Administrator to the estate of the deceased. However, sometimes in 2025 and without any colour of right, consent, license or authority from the Plaintiff or the estate of the deceased, the Defendant unlawfully entered the suit land, established a workshop, stationed machinery and commenced harvesting, excavation, removing, loading, transporting and commercially exploiting murrum and stones causing loss, damage and environmental degradation to the estate. The Plaintiff has tried to seek intervention from the Local Administration but without success and notwithstanding notice to sue the Defendant has refused to vacate. The estate continues to suffer loss hence this Motion.
 9. The Plaintiff has annexed the following documents to the Motion;
 1. Copy of the Grant of Letters of Administration issued to the Plaintiff on 9th November 2025 in Iten High Court Succession Cause No. E014 of 2025 in respect to the estate of the deceased.



2. Copy of a letter dated 24th November 2025 addressed to the Defendant by Plaintiff's Counsel to cease extraction and trespass on the suit land.
 3. Copy of certificate of official search for the suit land
 4. Photographs of land with machinery.
10. The Motion is opposed and Edwin Kiplagat Kigen the Defendant's manager has sworn a replying affidavit dated 3rd February 2026 in which he has deposed, inter alia that although the Plaintiff has relied on the Grant of Letters of Administration issued to her in Iten High Court Succession Cause No. E014 of 2025, the same is subject to an application for revocation filed by one Joseph Kimaiyo Cheboi and which matter is scheduled for mention on 30th March 2026. That the Defendant entered the suit land pursuant to a lawful agreement dated 24th November 2025 entered into with the said Joseph Kimaiyo Cheboi who was always lived on the sit land and who is the primary heir. That no court order existed and neither had a grant been issued at the time the Defendant entered the suit land.
 11. That the allegation of unlawful extraction, loss and damage as well as environmental degradation are categorically denied as the Defendant holds valid approvals from the National Environment Management Authority (NEMA). The Defendant further denies having been summoned by the Police and adds that Joseph Kimaiyo Cheboi is a brother to the Plaintiff and has equal status as a beneficiary and was never involved in the Succession Process. That the orders sought are based on material non-disclosure and the balance of convenience tilts in favour of maintaining the status quo pending the hearing and determination of the succession dispute.
 12. The following documents are annexed to the replying affidavit:
 1. Copy of sale agreement for murrum dated 24th November 2024 between the Defendant and Joseph Kimaiyo Cheboi.
 2. Copy of a report issued by NEMA on 16th March 2025 with respect to the extraction of road construction materials (murrum) from the suit land.
 13. When the Motion was placed before Waithaka J. on 12th January 2026, she directed that parties exchange documents and the same be mentioned for directions on 5th February 2026. On that day, the matter came before me and I directed that the Motion be canvassed by way of written submissions.
 14. Submissions have been filed by MS. Cheruiyot instructed by the firm of Cheruiyot J. And Company Advocates for the Plaintiff and by Mr. Barmao instructed by the firm of Ego Kipkemboi & Company Advocates for the Defendant.
 15. I have considered the Motion, the rival affidavits and annextures thereto as well as the submissions by Counsel.
 16. Before I delve into the Motion, I must first state that even as the same was pending determination, the Defendant moved to court vide their Notice of Motion dated 9th February 2026 seeking to vary the interim order of injunction issued on 5th February 2026. This court struck out the motion because in my view, what was sought therein could very easily be captured in the replying affidavit.
 17. An application for a temporary order of injunction pending trial is to be considered in accordance with the principles set at in the case of Giella V. Cassman Brown & Co. Ltd 1973 E.A 358. These are:
 1. The Plaintiff must show a prima facie case with a probability of success.



2. That unless the order of temporary injunction is granted, the Plaintiff might suffer irreparable injury which cannot adequately but compensated by an award of damages.
 3. If in doubt, the court will determine the application on a balance of convenience.
18. A prima facie case, as was held in the case of *Mrao V. First American Bank Of Kenya Ltd & 2 others* 2003 KLR 125 [2003 KECA 175 KLR];
- “..... 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 as to call for an explanation or rebuttal from the latter”
19. It is not in dispute that the suit land is registered in the name of the deceased whose estate the Plaintiff has been appointed as Administrator. It is also conceded by the Defendant that it entered into a sale agreement/contract with one Joseph Kimaiyo Cheboi to excavate on the suit land on 24th November 2024.
20. The deceased, as per the documents herein, died on 10th May 2000 and there is no evidence to suggest that he (Joseph Kimaiyo Cheboi) had obtained the Grant of Letters of Administration in respect to the estate of the deceased, by the time he entered into an agreement with the Defendant over the suit land. The only person with such Grant of Letters of Administration in respect to that estate is the Plaintiff. And only she could enter into any agreement with the Defendant or any other person over the suit land.
21. Joseph Kimaiyo Cheboi was basically intermeddling with the estate of the deceased when he signed an agreement with the Defendant over the suit property which is an offence under Section 45 of the *Law of Succession Act*. Counsel for the Defendant has submitted that there is a pending application for revocation of the Grant in the succession case. He has cited the case of *Kenleb Cons Ltd V New Gatitu Service Station & another* 1990 eKLR where it was held that an injunction cannot issue where the Applicant’s Case is doubtful and where serious factual disputes exist. To begin with, the copy of the summons for revocation of the Grant issued to the Plaintiff has not been annexed and unless and until the revocation is successful, the plaintiff remains the only party with Grant of Letters of Administration to sue or be sued in respect of the estate of the deceased – see *Virginia Edith Edith Wamboi V. Joash Ochieng Ougo & another* 1982 – 88 I KAR and also the case of *Trouistik Union International & Another V Jane Mbeyu & another* C. A Civil Appeal No. 145 of 1996.
22. It must also be remembered that in determining whether or not a prima facie case has been established, all that the court has to consider is that on the face of it, the party applying for the injunction has a right which has been or is threatened with violation and has a bona fide question to raise as to the existence of that right. As the Administrator to the estate of the deceased, the Plaintiff has a right to protect the estate property from alienation or wastage pending the hearing and determination of this suit. The Plaintiff has established a prima facie case in my view.
23. On irreparable loss which cannot adequately be compensated by an award of damages, counsel for the Defendant has submitted that if damages are an adequate remedy, an injunction should not be granted. He has cited the case of *American Cynamid Co. V Ethicon Ltd* 1975 AC 396 and stated that murrum extraction is a quantifiable commercial activity. Counsel has however made no attempt to quantify the damages or loss that the estate of deceased will suffer if the activity on the suit land continues even as the suit awaits determination.



24. I am also guided by the following paragraph in Halsbury's Laws Of England 3rd Edition Vol 21 page 352 paragraph 739 which states:

“It is the very first principle of injunction law that prima facie the court will not grant an injunction to restrain an actionable wrong for which damages are the proper remedy. Where the court interferes by way of an injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds, first that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the Plaintiff may have a right to recover damages is no objection to the exercise of the Jurisdiction by injunction, if his rights cannot be adequately vindicated by damages. Even where the injury is capable of compensation in damages an injunction may be granted if the act in respect of which relief is sought is likely to destroy the subject matter in question”. Emphasis mine.

25. It must also be remembered that the remedy of a temporary injunction is an equitable remedy and therefore the court has a discretion in making a decision whether or not to grant it. Each case must be considered on the basis of its peculiar circumstances. In any event, the fact that the party against whom the order is sought can pay damages is no reason to deny the aggrieved party such an order. I have no doubt in my mind that in the circumstances of this case, the excavations going on will destroy the suit land by changing its topography.
26. This court further takes notice of the fact that even though Joseph Kimaiyo Cheboi is a brother to the Plaintiff and will most likely be among the beneficiaries to the deceased's estate, he cannot be the only primary heir as deposed in paragraph II of the replying affidavit of Edwin Kiplagat Kigen the Defendant's manager. As at now, he is not the Administrator to the deceased's estate and cannot therefore arrogate to himself the power to enter into any agreements with the Defendant or any other person with respect to the suit land. It is also not lost to this court that the said Joseph Kimaiyo Cheboi did not even have the courtesy to inform the Plaintiff or indeed any other family member of his intention to enter into the agreement with the Defendant over the suit land. And if he did so, this court has not been informed. In brief, therefore, the Defendants are essentially trespassers on the suit land because the only party who could have consented to their entry onto the suit land by virtue of being the Administrator to the deceased's estate is the Plaintiff and she has not given such consent through any agreement oral or otherwise. The Defendant's counsel has also submitted, citing the case of Pius Kipchirchir Kogo V Frank Kimeli Tena 2018 eKLR, that an injunction is not a punishment but rather, it is meant to preserve the property in dispute and therefore, this court must consider which party will suffer the greater hardship. Of course an order of temporary injunction is not a final order and no party should feel punished. However, as I have already stated above, the Defendant is basically now a trespasser on the suit land and must therefore give way. As was held by the court of Appeal in the case of Jaj Superpower Cash & Carry & Others V. Nairobi City Council & Others C.a Civil Appeal No. 111 of 2002:

“This court has recognized and held in the past that it is the trespasser who should give way pending the determination of the dispute and it is no answer that the alleged acts of trespass are compensable in damages. A wrong doer cannot keep what he has taken because he can pay for it”.

27. I am of course also aware that at this stage, the court is not required to make any final findings of contested issues of fact and law. Rather, the court should only weigh the relative strengths of the parties.



It is however not in contest at this stage that the Defendant is in fact on the suit land excavating thereon on the basis of an agreement between it and a third party JOSEPH KIMAIYO CHEBOI who, as at the time of signing the said agreement, had no locus to do so and was intermeddling with the estate of the deceased. The remedy of a temporary injunction is well merited in the circumstances. Otherwise, failure to grant it will mean that by the time this suit is heard and determined, the suit land will have been depleted through excavation.

28. The third principle to guide this court is that in case of any doubt, the application must be determined on a balance of convenience. I am not in doubt that the Plaintiff has met the threshold of establishing a prima facie case and also that she stands to suffer irreparable loss that cannot be adequately quantified. Even if I was in doubt, the balance of convenience would tilt in favour of the Plaintiff given the material available to this court.
29. Finally, as was held in the case of Films Rover International Ltd –v Cannon Film Sales LTD 1986 3 ALL E.R 772, a court considering such an application should take the course that appears to carry the lower risk of injustice if it should turn out to have been wrong. See also Amir Suleiman V. Amboseli Resort Ltd 2004 eKRL 589.
30. I am persuaded that the lower risk of injustice in the circumstances of this case justifies the grant of the orders sought.
31. The upshot of all the above is that having considered the Notice of Motion dated 7th January, 2026, I allow it and make the following disposal orders:
 1. Pending the hearing and determination of this suit, the Defendant by itself, its agents, servants, representative or whosoever acting through them are restrained from entering, trespassing, alienating or in any way dealing with the land parcel No. Lelan/Kaptalamwa/48.
 2. The Defendant, if it so wishes, may only enter the suit land for purposes of removing its machinery and with the prior consent and presence of the Plaintiff and/or her representative.
 3. The Plaintiff must ensure that this suit is heard and determined within 12 months of this ruling failure to which the injunction order shall lapse unless otherwise extended by this court.
 4. Costs to the Plaintiff.

BOAZ N. OLAO

JUDGE

23RD MARCH 2026

RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 23RD DAY OF MARCH 2026 AS WAS ADVISED TO THE PARTIES ON 2ND MARCH, 2026.

BOAZ N. OLAO

JUDGE

23RD MARCH 2026

