

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELCL CASE NO. 14 OF 2026**

**PAUL NGUI KATILU:.....1<sup>ST</sup> PLAINTIFF/APPLICANT**  
**STEPHEN MBILA:.....2<sup>ND</sup> PLAINTIFF/APPLICANT**  
**REGINAH DAVID:.....3<sup>RD</sup> PLAINTIFF/APPLICANT**  
**KYALO DANIEL:.....4<sup>TH</sup> PLAINTIFF/APPLICANT**  
**GABRIEL MUTUA:.....5<sup>TH</sup> PLAINTIFF/APPLICANT**  
**JOSEPHAT KATILU:.....6<sup>TH</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**JAMES MWANZIA KATILU:.....1<sup>ST</sup> DEFENDANT/RESPONDENT**  
**MACHAKOS LAND**  
**REGISTRAR:.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

The application is dated 16<sup>th</sup> January 2026 and is brought pursuant to the provisions of Orders 40 & 51 (1),3,4 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Rules, 2010 seeking the following orders;

1. That this Application be certified urgent and be heard ex-parte in the first instance.
2. That this Honourable Court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> Defendant/Respondent, his agents, servants and any other

person whomsoever acting under or through him from disposing of, subdividing, developing, dumping any building materials or in any other manner whatsoever interfering with any of the resultant and subsequent subdivisions of the land originally titled MACHAKOS/KITANGA/28, pending the hearing and determination of this Application.

3. That this Honourable Court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> Defendant/Respondent, his agents, servants and any other person whomsoever acting under or through him from disposing of, subdividing, developing, dumping any building materials or in any other manner whatsoever interfering with any of the resultant and subsequent subdivisions of the land originally titled MACHAKOS/KITANGA/28, pending the hearing and determination of this
4. That the OCS Machakos Police Station be directed to supervise compliance of Court orders.
5. That costs of the Application be provided for.

It is supported by the Affidavit of Paul Ngui Katilu and the grounds that the 1<sup>st</sup> Defendant/Respondent was registered as the owner of the parcel of land originally titled MACHAKOS/KITANGA/28 measuring 34.91 Ha, purchased under KITANGA SETTLEMENT SCHEME, to hold in customary trust for the family of Simon Katilu (Deceased). That the family lived peacefully on the suit land until the

demise of Simon Katilu in the year 1995, when the 1<sup>st</sup> Defendant/Respondent began attempting to evict the Plaintiff's and their families, claiming that the suit land is not subject to any overriding customary trust. That the 1<sup>st</sup> Defendant/Respondent has since subsequently caused a subdivision of the suit land into the parcel of land titled MACHAKOS/KITANGA/910, MACHAKOS/KITANGA/911 and MACHAKOS/KITANGA/912 which resultant parcels he also further subsequently subdivided. That the 1<sup>st</sup> Defendant/Respondent has been unlawfully disposing of the suit land by selling it to third parties without the consent or approval of the Applicant. That the 1<sup>st</sup> Defendant/Respondent and the said third parties acting through him have begun unlawfully interfering with the suit land by digging holes, cutting down trees, clearing plants, burning down vegetation, depositing building materials, erecting fences and initiating construction of permanent structures. That as a result of the 1<sup>st</sup> Defendant/Respondent's illegal actions, the Plaintiffs have been unable to access the suit land. That the 1<sup>st</sup> Defendant/Respondent has been harassing, intimidating and attempting to evict the Plaintiffs and their respective families from the suit land, which would violate their constitutional right to property and render them homeless and destitute. That the 1<sup>st</sup> Defendant's/Respondent's illegal actions are continuous and will not stop unless they are restrained by an order from this Honourable Court. That unless the orders sought herein are issued the Plaintiffs

will face an imminent danger of losing the suit land and suffer irreparable damages.

This court has considered the application and the supporting affidavit therein. The application was not opposed. The principles of granting temporary injunctions are well settled and are set out in the judicial decision of *Giella vs Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

*“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.*

*These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.*

Consequently, the Plaintiff ought to, first, establish a prima facie case. In *Mrao Ltd vs First American Bank of Kenya Ltd (2003) ECLR* the Court of Appeal gave a determination on a prima facie case. The court stated that;

*“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”*

In support of the application, the Applicants stated that the 1<sup>st</sup> Defendant/Respondent was registered as the owner of the parcel of land originally titled MACHAKOS/KITANGA/28 measuring 34.91 Ha, purchased under KITANGA SETTLEMENT SCHEME, to hold in customary trust for the family of Simon Katilu (Deceased).

Secondly, The Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eCLR* provides an explanation for what is meant by irreparable injury and it states;

*“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that*

*irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.*

The Applicants stated that the family of Simon Katilu (Deceased) has lived peacefully on the suit land until the demise of Simon Katilu in the year 1995, when the 1<sup>st</sup> Defendant/Respondent began attempting to evict the Plaintiff's and their families, claiming that the suit land is not subject to any overriding customary trust.

Thirdly, the Plaintiff has to demonstrate that the balance of convenience tilts in their favour. In the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) EKLK which defined the concept of balance of convenience as:

*'The meaning of balance of convenience will 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 the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be*

*caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.*

*In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.*

The decision of Amir Suleiman vs Amboseli Resort Limited (2004) eKLR where the learned judge offered further elaboration on what is meant by “*balance of convenience*” and stated;

*“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”*

The Applicants state that 1<sup>st</sup> Defendant/Respondent has since subsequently caused a subdivision of the suit land into the parcel of land titled MACHAKOS/KITANGA/910, MACHAKOS/KITANGA/911 and MACHAKOS/KITANGA/912 which resultant parcels he also further subsequently subdivided. That the 1<sup>st</sup> Defendant/Respondent has been unlawfully disposing of the suit land by selling it to third parties without the consent or approval of the Applicants. The 1<sup>st</sup> Respondent was served but failed to attend court or file any response to the Application.

Bearing this in mind, I am convinced that there is a risk in not granting orders of temporary injunction than granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the current situation on the ground. I have also not had the opportunity to interrogate the annexures therein.

In *Robert Mugo wa Karanja vs Ecobank (Kenya) Limited & Another* (2019) eKLR where the court in deciding on an injunction application stated;

*“circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”*

In view of the foregoing, I find that the application is merited and order that the status quo be maintained pending the hearing and determination of this suit. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF  
MARCH 2026.**

**N.A. MATHEKA**

**JUDGE**

ORIGINAL