

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KITALE**

**ELC NO. E061 OF 2025**

**LOKWARIMU LOBARATUM**

*(Suing as the legal and personal representative of the estate of*

**ELIJAH**

**MOTOPOT**

**KARUMASES**

**(DECEASED)-----PLAINTIFF**

**VERSUS**

**REUBEN PKEMOI**

*(Sued in his capacity as the administrator of the estate of*

**ELIJAH LOPEYOK MUKEE)-----1<sup>ST</sup>**

**DEFENDANT**

**COUNTY LAND REGISTRAR**

**WEST POKOT COUNTY-----2<sup>ND</sup>**

**DEFENDANT**

**THE KENYA ELECTRICITY TRANSMISSION**

**COMPANY (KETRACO)-----3<sup>RD</sup>**

**DEFENDANT**

**THE HON. ATTORNEY GENERAL-----4<sup>TH</sup>**

**DEFENDANT**

**RULING**

1. The plaintiff, by an application dated **27/11/2025**, seeks a temporary order of injunction barring and restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants from

transmitting, or carrying out any transaction or dealings with Land Title No. **West Pokot/Keringeti 'A'/368**, the suit property, pending hearing and determination of this suit. He also seeks an order that payments in relation to any easement granted to the 3<sup>rd</sup> defendant over the suit property be suspended.

2. The application is supported by the grounds on its face and in a supporting affidavit of Lokwarimu Lobaratum, sworn on **11/12/2025**. The deponent describes himself as the son of the late Elijah Motopot Korumases, as per the certificate of death and a chief's letter attached as **LL-1(a)**, who used to own the suit property as per the annexed green card as **LL-(2)**.
3. The plaintiff deposes that the 1<sup>st</sup> defendant was a primary school teacher and a tenant of the suit property, to take care of him while other family members were away, to which he had obtained a title deed in **1970**. The plaintiff deposes that after his father passed on, the tenant took advantage of him and the naivety of family members to fraudulently misrepresent himself to the Land Registrar as the late father causing rectification of his names in the green card in his favour, demolish the dwelling houses therein and effectively

displaced them before the family could apply for letters of administration to transmit the land to themselves.

4. The plaintiff deposes that after Elijah Lopeyok passed on, his family continued to the illegality and obtained a grant of letters of administration, purported to transmit to themselves the land in total disregard of the rights and interests of the plaintiff's estate as per a copy of the confirmation of grant attached as **LL-(3)**.
5. The plaintiff deposed that the family of the late Elijah Lopeyok even entered into a contract with and granted an easement to the 3<sup>rd</sup> defendant and have since continued to receive benefits at their expense as per an official search attached as **LL-(4)**.
6. The plaintiff deposes that the acts of the 1<sup>st</sup> defendant were fraudulent, amounted to deceit and collusion with the 2<sup>nd</sup> defendant to disentitle the estate of the suit property by trespassing on the land of a deceased person without a valid grant of letters of administration from the court, an affidavit or deed poll confirming the change of names before the green card entries could be effected or changed, and hence all this was done through misrepresentation.

7. The application is opposed by the 1<sup>st</sup> defendant through a replying affidavit sworn by Reuben Pkemoi on **2/2/2026**. It is deposed that there is nothing attached to show that the suit land ever belonged to Elijah Motopok Korumasses, as the father of the plaintiff, yet according to annexure marked **LL-(1)**, his name is captured as Francis Rurumwo, and not Elijah Motopok Korumasses.
8. The 1<sup>st</sup> defendant deposes that in **2016**, the plaintiff had obtained a different chief's letter dated **22/6/2016** showing that he was the sole survivor of his late father's estate attached as **RP-(1)**. The 1<sup>st</sup> defendant deposes that the green card attached as **LL-1(b)** does not reflect the plaintiff's late father's name as the owner of the land.
9. Further, the 1<sup>st</sup> defendant deposes that the adjudication record attached as **RP-(2)** shows the names Elijah L.M. Korumesses, L. standing for Lopeyok, while M. stands for Mukée, whose names Elijah Mukée Lopeyok were on his father's ID card.
10. The 1<sup>st</sup> defendant deposes that the alteration of names in **LL-(a)** were made so that the records in the adjudication record could match as per an application to correct the names in the register, attached as **RP-(3)**. The 1<sup>st</sup> defendant deposes that at no time was the plaintiff's late father in

occupation of the suit land, otherwise in Land Disputes Tribunal Case attached as **RP-(4)**, one Lotunale Bwomu, an alleged brother of the deceased, had sued Clementina Turkana Elijah over the suit land, whose decision was quashed in **Kitale HC Misc. Suit No. 40 of 2004**, attached as **RP-(5)**.

- 11.** The 1<sup>st</sup> defendant deposes that no title deed was issued to the plaintiff's father in the register for the land, which was on **9/4/1984**, almost **14** years after his demise, and that he could not have been in occupation, having passed on in **1973**. The 1<sup>st</sup> defendant deposes that no late registrations for deaths before **1972** were issued in West Pokot County, yet the plaintiff has one for a death that occurred in **1970**, whose authenticity is suspect.
- 12.** The 1<sup>st</sup> defendant terms the chief's letters as contradictory and fraudulently flawed, which also lack an explanation from the plaintiff. The 1<sup>st</sup> defendant deposes that the plaintiff has failed to disclose when he discovered the transfer or attach documents to that effect, or explain a delay of **46** years since the death of his father to discover the transfer or after the issuance of title on **25/2/1985** till filing of the suit, the only inference being that he was not in use or occupation of the land.

- 13.** The 1<sup>st</sup> defendant deposes that it is the plaintiff who is changing his late father's names to resemble those of his late father to swindle him of the land, which has already been distributed through succession, and a certificate of confirmation of grant issued. The 1<sup>st</sup> defendant deposes that the plaintiff has not met the test for the grant of a temporary injunction.
- 14.** The plaintiff relies on the written submission dated **30/1/2026**. Reliance is placed on **Order 40 Rule 1** of the Civil Procedure Rules, **Njenga -vs- Njenga [1985] KECA 43 (KLR), Giella -vs- Cassman Brown & Co. Ltd [1973] EA 358, Mrao Ltd -vs- First American Bank (K) Ltd & Another (2003) eKLR, Ngurman Ltd -vs- Jan Bonde Nielsen & Others [2014] eKLR, Jan Mohammed -vs- Commissioner of Lands & Others [1996] eKLR, Virginia Edith Wambui -vs- Joash Ochieng Ougo [1987] eKLR and Pius K. Kogo -vs- Frank Kimeli Tenai [2018] eKLR.**
- 15.** The 1<sup>st</sup> defendant relies on written submissions dated **2/2/2026**. Reliance is placed on **Nguruman Ltd -vs- Jan Bonde Nielsen (supra), Giella -vs- Cassman Brown (supra), Sunkuli -vs- Ombati & Others [2025] KEELC 8364 [KLR], Commercial Finance Co. Ltd -vs- Afraha Education Society**

**& Others C.A. Civil Appeal No. 142 of 1999, Kathiri -vs- Chege & Another KEELC 15308 [KLR], and Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Ltd & Others [2016] eKLR.**

- 16.** A party seeking a temporary order of injunction must meet the tests set out in **Giella -vs- Cassman Brown Co. Ltd** (*supra*), and **Njenga -vs- Njenga** (*supra*). A prima facie case refers to an arguable and bona fide case. In **Mrao Ltd -vs- First American Bank of Kenya Ltd** (*supra*), the court said a prima facie case is not confined to a genuine and arguable case. The court said that it is a case in which, on the material presented to the court, there is a conclusion of the existence of a right which has apparently been infringed by the opposite party, as to call for an explanation or rebuttal from the opposite side.
- 17.** The three tests as held in **Mbuthia -vs- Jimba Credit Finance Corporation & another [1988] KECA 116 (KLR)**, a court is not required to make final findings on contested facts and law, but only weigh the relative strength of the parties' cases.
- 18.** Irreparable loss or damage refers to loss or damage that may not be quantified in monetary terms or remedied by way of damages. In **Kathiri -vs- Chege & Another** (*supra*), the court said that

an applicant must demonstrate the nature and extent of the injury. The injury must not be speculative. Mere apprehension or fear is not enough. The injury or loss must be actual, substantial, demonstrable, and apparent. In **Nguruman Ltd -vs- Jan Bonde Nielsen** (*supra*), the court held that it must be satisfied that the injury that the applicant will suffer in the absence of an injunction will be irreparable.

19. As to the balance of convenience, the court in **Kogo -vs- Tenai** (*supra*) held that it refers to the inconvenience to be suffered by the applicant being greater than that of the respondent, if an injunction is issued and the suit ultimately allowed, than if it is not allowed and the suit ultimately is dismissed at the hearing.
20. The three conditions must be established sequentially and logically. In **Kenya Commercial Finance Co. Ltd -vs- Afraha Education Society & Another C.A. No. 142 of 1999**, the court said that if the applicant has no registered interest in the land comprised in the title in dispute and has not demonstrated that there is a prima facie case, the other tests need not be assessed.
21. In **Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd** (*supra*), the court said that where

any doubt exists as to applicant's right or if the right is not disputed, but its violation is denied, the court takes consideration of the balance of convenience to the parties, the nature and the extent of the injury which each of the parties, on the other hand could suffer if the injunction is granted or not.

- 22.** In **Nguruman Ltd -vs- Jan Bonde Neilsen** (*supra*), the court observed that if a prima facie case is not established, then the irreparable injury and the balance of convenience need no consideration.
- 23.** In **D.T. Dobie (K) Co. Ltd -vs- Muchina [1982] KLR**, a cause of action was defined as a set of facts sufficient to justify a right to sue, to enforce a right against another party. In **Edward Moonge Lengusuranga -vs- James Lanaiyara & another [2019] eKLR** as cited in **Sunkuli -vs- Ombati & Others** (*supra*), the court held that the term refers to the legal theory upon which a plaintiff brings a suit.
- 24.** The plaintiff's cause of action is captured in paragraphs **8, 9, 10, 11 - 15** of the plaint dated **27/11/2025**. It is pleaded that the plaintiff's late father had acquired an interest in the suit property

before the land adjudication process commenced and was completed in **1984**.

- 25.** It is averred that the plaintiff came to learn of the cancellation of the name of the deceased, who was the legitimate and bona fide owner in favour of the 1<sup>st</sup> defendant, through fraud, misrepresentation, and illegality. On the other hand, the 1<sup>st</sup> defendant denies that the plaintiff's late father was ever the owner, possessor, user, or occupier of the suit property. He avers that it was not possible to have the land registered or recorded in the name of the deceased in **1970**, as the land only became titled on **9/4/1984**, almost **14** years after his demise.
- 26.** The 1<sup>st</sup> defendant, at paragraph **19** of the replying affidavit, questions when the plaintiff discovered the alleged fraud without supporting documents. The 1<sup>st</sup> defendant terms the delay of **46** years as non-explained since issuance of a title on **25/2/1985** and the subsequent transmission of the same through succession proceedings as per the rectified certificate of confirmation of grant dated **20/4/2024**, without any objection from the plaintiff.
- 27.** The question of limitation of a cause of action touches on the jurisdiction of the court, as held in

**Bosire Ongeru -vs- Royal Media Services Ltd**  
**[2015] eKLR.**

- 28. Section 26** of the Limitation of Actions Act provides that the period of limitation in a claim based on fraud does not begin to run until the plaintiff has discovered the fraud.
- 29.** The law of Limitation, as held in **Gathoni -vs- KCC Ltd [1982] KLR 104,** is intended to protect defendants against unreasonable delay in the bringing of suits against them. A claimant is expected to exercise reasonable diligence and to take reasonable steps in his own interest.
- 30.** In **Iga -vs- Makerere [1972] eKLR,** the court held that the Limitation of Actions Act does not extinguish a suit or action, but operates to bar the claim, or the remedy sought. The plaintiff has not disclosed when he became aware of the alleged fraudulent entries to replace the names of his late father. The 1<sup>st</sup> defendant casts doubts on the chief's letters and the contradictory information or documents as to the correct names of the plaintiff's deceased father. The 1<sup>st</sup> defendant takes the view that it is the plaintiff who is now changing his late father's name to resemble that of his late father to swindle them of the land. The 1<sup>st</sup>

defendant holds a valid title deed issued in **1985** and a rectified grant.

- 31. Section 5** of the Land Adjudication Act, Cap 284, relates to the manner in which an adjudication section is established and published. A claimant is expected to point out to the demarcation officers his portion, boundaries, or line before the date fixed by the demarcation officers.
- 32.** If the plaintiff's late father had passed on before the adjudication process commenced or was finalized in **1984**, he would definitely have had an adjudication book or card to show the parcel number. If he had passed on by the time the adjudication register was closed, his guardian under customary law would be the one protecting his interests or claim under **Sections 13, 23(1) and (2), 24, 26, and 26A** of the Land Adjudication Act.
- 33.** There is no attachment to the supporting affidavit of any land adjudication records or documents ascertaining when the plaintiff's late father's names, particulars, and details were entered into or recorded in the adjudication registers in relation to the suit property, as different from those of the 1<sup>st</sup> defendant's late father.

- 34.** The court is asked to restrain the 1<sup>st</sup> and 2<sup>nd</sup> defendants from transmitting, carrying out transactions, or dealings with the suit property or making payments in respect of the easement over the suit property. What the plaintiff is seeking is in the nature of a permanent injunction. In **Kenya Power & Lighting Co. Limited -vs- Sherrif Molana Habibi [2018] eKLR**, a permanent injunction was said to be granted to perpetually restrain the commission of an act to safeguard the right of the plaintiff. It is only granted after the determination of the rights. Mandatory injunction, as held in **Lucy Wangui Gacharua -vs- Minudi Okemba Lore [2015] eKLR**, is granted in the clearest cases.
- 35.** In this application, the loss the plaintiff is likely to suffer is quantifiable. It cannot be said to be irreparable. The plaintiff has not occupied the land for over **46 years**. Further, the injury, if any, is not immediate, pressing, or likely to cause extreme hardship. On the other hand, the inconvenience to the 1<sup>st</sup> defendant and the 3<sup>rd</sup> defendant would be more compared to the plaintiff's, if the suit is ultimately dismissed.

**36.** The upshot is that I find the applicant has failed to meet the ingredients of a temporary injunction. The application is dismissed with costs.

**37.** Orders accordingly.

**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **15<sup>th</sup>** day of **April 2026**.

**In the presence of:**

Court Assistant - Dennis

Mr. Asembo for Odicho for the plaintiff present

Mr. Kiarie for the 1<sup>st</sup> defendant present

2<sup>nd</sup> and 3<sup>rd</sup> defendants represented by Miss Mutomi



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**