



Pkemoi (Suing as the administrator of the Estate of Elijah Lupeyok Mukee - Deceased) & another v Pkalya & another (Environment and Land Case E001 of 2026) [2026] KEELC 2040 (KLR) (15 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2040 (KLR)

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

CK NZILI, J

APRIL 15, 2026

BETWEEN

REUBEN PKEMOI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF ELIJAH LUPEYOK MUKEE - DECEASED) 1ST PLAINTIFF

MILKA CHELIMO MUKEE 2ND PLAINTIFF

AND

ELCAH PKALYA DEFENDANT

AND

ALICE CHEROP MUKEE INTERESTED PARTY

RULING

1. The plaintiffs approached this court through a plaint dated 10/1/2026. They seek a declaration that the defendant is a trespasser on the 2.67 acres on L.R No. West Pokot/Keringet 'A'/368, belonging to the 2nd plaintiff, as per a rectified grant of letters of administration issued on 10/12/2022 in Kitale P&A Cause No. 66 of 2006. The plaintiffs also seek temporary and permanent injunctions restraining the defendant, his agents, servants, or employees from further trespass to the suit land.
2. Alongside the plaint, the plaintiffs have filed a notice of motion dated 10/1/2026 seeking a temporary injunction stopping the defendant from further entering into, taking possession, occupying, developing, wasting, or undertaking any further developments or interfering with the user or occupation of 2.5 acres out of the 21 Ha of the suit land, pending hearing and determination of this suit.
3. The grounds are set out on the face of the application and in a supporting affidavit sworn by Reuben Pkemoi and Milka Chelimo Mukee on the 10/1/2026. The 1st plaintiff deposes that he is the legal



- administrator of the estate of their late father Elijah Pkemoi Mukee, which estate comprise of the suit land, to which after obtaining a grant of letters of administration in Kitale HC P&A Cause No. 66 of 2006, he embarked on the survey and beaconing in favour of the beneficiaries to the estate as per the rectified confirmation of grant dated 20/4/2023, attached as RP-(1).
4. The 1st plaintiff deposes that he allocated each of the 2nd plaintiff and the interested party a portion measuring 2.67 acres, fronting the road, whose presence reduced their acreage to 2.5 acres as per the annexed sketch map marked RP-(2). The 1st plaintiff deposes that it's only after the exercise was over that he learned that the defendant had trespassed into the portion fronting the road, fenced it off, dug a pit latrine, and delivered construction materials therein in readiness for construction.
 5. The 1st plaintiff deposes that upon a follow-up, he learned that the interested party was involved in the wrongful entry, hence the demand letter dated 9/12/2025 annexed hereto.
 6. The 1st plaintiff deposes that, having pointed out each beneficiary portion of the land to both the 2nd plaintiff and the interested party, the defendant could only have bought the land belonging to the interested party, and he was never consulted as the administrator to identify to her the land of the 2nd plaintiff.
 7. The 2nd plaintiff deposes that it is true she is one of the beneficiaries of the estate of her deceased father, as per the rectified grant and a certificate of an official search, attached as MCM-(1) and (2) respectively, together with the interested party of a portion measuring 2.67 acres now reduced to 2.5 acres, due to the access road.
 8. The 2nd plaintiff confirms that after the survey and beaconing, each of them was physically shown the portions on the ground, and the one next to the road belongs to her. The 2nd plaintiff deposes that despite that knowledge, that the portion next to the road is hers, the interested party sold the same to the defendant and then relocated to an unknown place.
 9. The 2nd plaintiff deposes that on 18/12/2025, she managed to call through her cellphone, the defendant who arrogantly and rudely proceeded to fence off her parcel of land, dug a pit latrine and delivered construction materials as per the photographs and demand letter attached as MCM-(3)(a) (b) and (4) respectively, hence the reliefs sought.
 10. Though the plaintiff and the application were duly served upon the defendant and the interested party and a return of service dated 10/2/2026 filed, no response has been filed to oppose both the suit and the notice of motion dated 10/1/2026.
 11. The plaintiffs rely on written submissions dated 10/2/2026. Reliance is placed on *Giella -vs- Cassman Brown Co. Ltd* [1973] EA 358 and *Mrao Ltd -vs- First American Bank (K) Ltd* [2003] KLR 125.
 12. A party seeking a temporary order of injunction has to meet the conditions set in *Giella -vs- Cassman Brown Co. Ltd* (supra). In *Mrao Ltd -vs- First American Bank (K) Ltd* (supra), the court held that the power to grant an interim order of injunction is discretionary. A prima facie case was described as including, but not confined to, a genuine and arguable case, which, based on the material presented to the court, shows that an existing right has been infringed by the opposite party to call for an explanation or rebuttal from the other.
 13. Order 40 Rule 1 of the Civil Procedure Rules provide that where in any suit, it is provided by affidavit or otherwise, that the property in dispute in a suit is in a danger of being wasted, damaged or alienated, by any party to the suit, the court may grant an order of temporary injunction to prevent such acts until the suit is heard and determined.



14. In *Mrao Ltd -vs- First American Bank Ltd* (supra), the court held that evidence must be tendered to show a prima facie case, demonstrate irreparable injury if the injunction is not granted, and allay any doubts by showing the balance of convenience in his favour. The court said that it is not sufficient to raise issues, but also, the evidence must show an infringement of a right and the probability of success of the applicant's case at trial.
15. Irreparable loss refers to one that is real, apparent, and incapable of being qualified or cured, or to put conditions back the way they were monetarily. In *Nguruman Ltd -vs- Nielsen & Others* [2014] eKLR, the court defined it as an injury where there is no standard by which the amount can be measured with reasonable accuracy, or the injury or harm that is such a nature that may not be ascertained monetarily.
16. Balance of convenience is one where, if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendant, if the injunction is granted, but the suit is ultimately dismissed, as held in *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai ELC Eldoret No. 221 of 2017*.
17. The court, in seeking to establish the foregoing principles, is not expected to conduct a mini-trial but to see, based on the material placed before it, that the justice of the matter requires issuance of temporary orders of injunction.
18. The plaintiffs have tendered a certificate of official search and a rectified confirmation of grant in favour of the 2nd plaintiff in relation to the suit land.
19. Section 3(2) of the *Trespass Act* defines trespass as a violation of a right to immediate use and occupation of private land, without justification, consent, or authority of the owner. The 1st plaintiff is the registered owner of the suit land to which the 2nd plaintiff has a beneficial interest as per the rectified grant. The evidence tendered by the plaintiffs so far shows that there is an infringement of those rights or interests. The defendant and the interested party have not refuted those allegations by way of a rebuttal.
20. The plaintiffs have demonstrated undoubted rights which have been infringed by the defendant. Unless the intended permanent developments on the suit land are stopped, the plaintiffs shall suffer irreparable loss and damage. Therefore, the balance of convenience tilts in favour of issuing a temporary order of injunction to last until the suit is heard and determined.
21. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 15TH DAY OF APRIL 2026.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant – Dennis

Mr. Kiarie for the plaintiffs present

Defendant and the interested party absent

