

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KAJIADO

ELC LAND APPEAL NO. E067 OF 2025

JAM RESCUE RESTAURANT LIMITED

APPELLANT/APPLICANT

VERSUS

SADAM KASAIKA OLE KETIKAI (*Sued as the*

Administrator of the Estate of MOSES

SIMITEI OLE LESUSI (DECEASED))

RESPONDENT

RULING

(In respect of the Notice of Motion application dated 18th November 2025 seeking an interim injunction pending determination of the appeal)

Introduction

1. Coming up for determination before this Court is the Appellant/Applicant's Notice of Motion application dated **18th November 2025**. The application is expressed to be brought under Order 40 Rules 1, 4 & 11, and Order 51 Rules 1 & 3 of the Civil Procedure Rules 2010, alongside Sections 1A, 1B, 3A, 63, 79G, and 95 of the Civil Procedure Act (Cap 21 Laws of Kenya), and all other enabling provisions of the law.
2. The Applicant principally seeks an order of Interim Injunction restraining the Respondent, whether by himself, his authorized agents, servants, employees, workers, or otherwise howsoever from encumbering, trespassing on, wasting, damaging, alienating, selling, transferring, sub-dividing, and/or in any other manner whatsoever interfering or

intermeddling with the property known as **Title Number KJD/KAP-CENTRAL/7286**, pending the hearing and determination of the substantive appeal.

3. The application is premised on the grounds set out on the face of the Notice of Motion and is further anchored on the Supporting Affidavit of **John Kingori Mwangi**, a Director of the Applicant company, sworn on the **18th day of November 2025**, together with the annexures attached thereto.
4. The factual substratum of the application, briefly stated, is that the Applicant is dissatisfied and aggrieved by the judgment of Honorable Edgar Kagoni, Senior Principal Magistrate, delivered on the **14th of October 2025** in *Kajiado Senior Principal Magistrate's Environment & Land Court ELC Case No. E046 of 2023*, wherein the trial court dismissed the Applicant's claim to the suit property in favour of the Respondent.
5. The Applicant asserts that it has preferred a bona fide appeal raising fundamental issues of law with high prospects of success. It is the Applicant's primary contention that unless the injunctive orders sought are granted, the Respondent will be at liberty to deal with or dispose of the suit property, thereby causing monumental and irreparable loss, destroying the substratum of the pending appeal, and ultimately rendering the appeal nugatory.
6. The application is opposed by the Respondent, **Sadam Kasaika Ole Ketikai**, through a Replying Affidavit sworn and filed on record.
7. In opposing the application, the Respondent avers that the Notice of Motion lacks merit, is incompetent, and constitutes an abuse of the court process. He contends that the trial court's judgment delivered on the 14th of October 2025 was sound, well-reasoned, and arrived at after a proper evaluation of the evidence adduced during the trial.

Consequently, the Respondent disputes the Applicant's assertion that the intended appeal raises fundamental issues of law or enjoys high prospects of success.

8. Furthermore, the Respondent maintains his position as the lawful administrator of the estate of the deceased and the rightful owner of the suit property. He deposes that the Applicant has entirely failed to meet the established legal threshold for the grant of an order of interim injunction pending appeal. Specifically, the Respondent argues that the Applicant has neither established a *prima facie* case with a probability of success, nor demonstrated that it stands to suffer irreparable injury that cannot be adequately compensated by an award of damages.
9. Premised on the foregoing grounds, the Respondent urges this Honorable Court to find that the balance of convenience tilts in his favour and to subsequently dismiss the Applicant's Notice of Motion with costs.

Directions

10. The court directed that the application be canvassed by way of written submissions, the submissions of which have been duly considered in the writing of this ruling.

Issues for determination

11. The primary issue for determination is whether the Applicant has satisfied the legal threshold for the grant of an order of interim injunction pending appeal.

Analysis and Determination

12. I have carefully considered the Notice of Motion application, the Supporting and Replying Affidavits, and the rival written submissions filed by Counsel for the respective parties.

13. The Applicant's case is premised on the contention that it has a strong, arguable appeal with high prospects of success. The Applicant argues that unless an interim injunction is granted, the Respondent will be at liberty to deal with the suit property, KJD/KAP-CENTRAL/7286, thereby destroying the substratum of the appeal and rendering it nugatory. The Applicant further submits that it stands to suffer monumental, irreparable loss that cannot be compensated by an award of damages.

14. Conversely, the Respondent's case is that the trial court already conclusively determined the rights of the parties. The Respondent asserts that the Applicant failed to pay the outstanding balance of Kshs. 2,250,000/= from an initial oral sale agreement, leading the trial court to direct the Estate to refund the Applicant a sum of Kshs. 454,500/= with interest. The Respondent further contends that the deceased had already sold 150 acres of the land to third parties who are currently in occupation. Consequently, the Respondent argues that the Applicant has no right over the suit property capable of being protected by an injunction and fails to meet the requisite legal threshold.

15. The power of this Court to grant an injunction pending appeal is discretionary but being judicial discretion must be exercised upon established legal principles. The statutory anchor for this jurisdiction is Order 42, Rule 6(6) of the Civil Procedure Rules, 2010, which provides as follows:

"Notwithstanding anything contained in sub rule (1) of this rule, the High Court shall have power in exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or a tribunal has been complied with."

16. In respect to the order of injunction pending appeal, Visram J (as he then was) in the case of *Patricia Njeri & 3 others –vs- National Museum of Kenya (2004) eKLR*, stated as follows;

*“An order of injunction pending appeal is a discretion which will be exercised against an Applicant whose appeal is frivolous. The discretion should be refused where it would inflict greater hardship than it would avoid. The Applicant must show that to refuse the injunction would render the appeal nugatory. The court should also be guided by the principles in *Giella –vs- Cassman Brown (1973) E.A. 358*”.*

17. In the case of *Shem David Mukumbi –vs- Alice Nzula Kilonzo (2021) KEHC 13430 (KLR)*, Odunga J (as he then was) observed that in light of the overriding objective stipulated in Sections 1A and 1B of the Civil Procedure Act, the court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of their powers under the Civil Procedure Act or in the interpretation of any of its provisions.

18. Odunga J opined that;

“All the pre-overriding objective decisions must now be looked at in the light of the said provisions. This does not necessarily imply that all precedents are ignored but the same must be interpreted in a manner that gives effect to the said objective. What is expected of the court is to ensure that the aims and intendment of the overriding objective as stipulated in Section 1A as read with Section 1B, are attained”.

19. The court in this case notes that the application herein was filed without unreasonable delay. I further note that the Appellant has lodged the record of appeal to facilitate the expedient hearing of the appeal. With that in mind, in order to uphold the principle of equality of arms, and considering the above propositions against the grounds in support of the application before me and further considering this court's obligation to uphold the overriding objective, I am persuaded that it is in the interest of justice that an order of injunction be granted in favour of the Applicant which I hereby grant as sought, restraining the respondent from selling, transferring and or disposing of the suit property pending the hearing and determination of the appeal.
20. Accordingly, I allow the application as prayed. The costs of the application shall abide the outcome of the appeal.

It is so ordered.

Orders accordingly.

Dated Signed and Delivered at Kajiado Virtually this 16th Day of April 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Mukeli for the Respondent

Mr. Gikaria for the Appellant/Applicant

Court Assistant: Alex

M.D. MWANGI
JUDGE