



Chebet & another v Kimeto & another (Environment and Land Appeal E010 of 2025) [2026] KEHC 4498 (KLR) (31 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
ENVIRONMENT AND LAND APPEAL E010 OF 2025**

**L WAITHAKA, J
MARCH 31, 2026**

BETWEEN

RODA CHEBET 1ST PLAINTIFF

PRISCAH TUITOEK 2ND PLAINTIFF

AND

PHILIP KIMETO 1ST DEFENDANT

DAVID TINDERET KIMETO 2ND DEFENDANT

RULING

1. By a plaint dated 28th July 2025, the plaintiffs instituted the instant suit seeking judgment against the defendants for among other orders, an order of permanent injunction restraining the defendants by themselves, their agents, cronies or any person whatsoever acting under their authority from trespassing, evicting or in any manner interfering with their occupation of 2 acres of land comprised in the parcel of land known as Lembus/Kilombe/348, hereinafter referred to as the suit property.
2. As can be discerned from the averments/contentions in the plaint, the plaintiffs' suit is premised on the grounds that the plaintiffs purchased 2 acres of land comprised in the suit property from the 1st defendant; that pursuant to the sale agreement executed between the plaintiffs and the 1st defendant, the plaintiffs took possession of the portion of the suit property they bought and effected development thereon (built their homes thereon); that the plaintiffs had been enjoying peaceful and quiet enjoyment of the portion of the suit property they bought until sometime in 2023 when the 2nd defendant interfered with their enjoyment of their portion of the suit property.
3. According to the plaintiffs, the circumstances leading to interference with their occupation of the portion of the suit property they bought by the 2nd defendant, are that the 2nd plaintiff had lost her son and wanted to inter him in her possession of the suit property.



4. The plaintiffs point out that following the action by the 2nd defendant complained of, the 1st defendant filed a suit in court to wit Eldama Ravine PMCC Case No.E006 of 2023 in which he asserted his rights over the suit property. The plaintiffs also point out that the suit filed by the 1st defendant was struck out by the court for want of pecuniary jurisdiction and contend that the 1st defendant holds the two acres of land they bought in trust for them.
5. Simultaneously with the plaint, the plaintiffs filed a notice of motion of an even date in which they inter alia seek an order of temporary injunction to restrain the defendants by themselves, their agents, employees, cronies or any person acting under their authority and/or instructions, from trespassing, evicting, leasing, charging, removing from or in any manner whatsoever, interfering with the two acres of land comprised in the suit property which they occupy.
6. The application is premised on the grounds on its face, which are in pari materia to the grounds cited above, on which the main suit is premised.
7. The application is supported by the affidavit of the 1st plaintiff/applicant Rodah Chebet, sworn on 28th July 2025, in which the grounds on the face of the application are reiterated. Annexed to the affidavit are the following documents:-
 - i. Authority to plead given to the deponent of the affidavit by the 2nd plaintiff;
 - ii. A Copy of sale agreement dated 1st July, 2020 executed between the 1st defendant and the 1st plaintiff;
 - iii. Acknowledgement note signed between the 1st plaintiff and the 2nd defendant;
 - iv. Photographs showing the activities of the plaintiffs on the suit property;
 - v. Certificate under section 106B(4) of the Evidence Act;
 - vi. Ruling delivered on 21st July, 2025 in Eldama Ravine PMCC No. E006 of 2023.
8. The 1st defendant through his appointed representative, Matilda Chebet Kimeto, filed a response to the application-the replying affidavit she swore on 22nd October 2025, in which she contends that the 1st defendant never parted with the suit property either by way of gift or sale or otherwise. Through the affidavit, the 1st defendant acknowledges that Eldama Ravine PMCC No. E006 of 2023, which he filed asserting his rights to the suit property was struck out by the court on account of want of pecuniary jurisdiction.
9. Explaining that he filed an appeal against the decision of the lower court, the 1st defendant contends that the instant suit is calculated at circumventing or defeating his right of appeal hence an abuse of the process of the court.
10. In a rejoinder, the plaintiffs filed a further affidavit by the 1st plaintiff, Rodah Chebet sworn on 4th November 2025, in which they have deponed as follows:-

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3. The defendant has not contested the fact that we are in occupation of two (2) acres of all that parcel of land comprised in Lembus/Kilombe/348 (the suit property) wherein we have built our permanent homes having acquired the same from the defendants herein;



4. ...registration of the 1st defendant as the proprietor does not extinguish our interests over the two (2) acres as the 1st defendant received purchase moneys from us hence creating a resulting trust in our favour, a fact that we have actually pleaded and will be able to prove during the main trial.
 5. in regards to the cited case before the lower court, MEELC E006 of 2023, I am advised by our advocates on record that the said suit has no bearing on this case as it was dismissed by the trial court for want of jurisdiction. Having so dismissed, we acted within our rights to move to this court for appropriate relief and assert our proprietary interests over the suit property.
 6. the filing of any subsequent appeal by the 1st defendant against the order of dismissal of the said suit is not a bar to instituting the instant proceedings by ourselves. In any event, any appeal thereof will be determined by the court on its own merits.
 7. in view of the foregoing and the material evidence produced before court, it is in the interest of justice and in further ensuring that the substratum of the dispute is preserved that the application dated 28th July 2025 is allowed.”
11. In a bid to stay this case, the 1st defendant filed the notice of motion dated 8th October 2025 in which he prays that there be an order of stay of proceedings in this matter, Kabarnet ELC Case No. 10 of 2025- Rodah Chebet & another vs. Philip Kimeto Koech & Another pending the hearing and determination of Kabarnet ELC Appeal No.E030 of 2025 -Philip Kimeto Koech & Another vs. Rodah Chebet & Another. The application is premised on the grounds that the plaintiffs/respondents instituted the instant suit immediately after delivery of the ruling on 21st July 2025 in Eldama Ravine ELC Case No.E006 of 2023, which struck out the 1st defendant’s suit for want of pecuniary jurisdiction; that the 1st defendant/applicant has since filed Kabarnet ELC Appeal No. E030 of 2025, which is active and pending determination; that the instant suit was filed before the lapse of the 30 day appeal period and is intended to frustrate and defeat the appeal process and that proceeding with this matter while the appeal is pending will result in conflicting findings, waste of judicial time and render the appeal nugatory.
 12. The application is supported by the affidavit of the Matilda Chebet Kimeto, a daughter of the 1st defendant, in which the grounds on the face of the application are reiterated.
 13. The plaintiffs filed grounds of opposition, dated 5th November 2025, in which they contend/state as follows:-
 - i. the application is bereft of merit and does not meet the requirements of Order 42 rule 6 of the Civil Procedure Rules;
 - ii. the application is fatally defective in that whereas the same seeks stay of proceedings pending outcome of ELCA E030 of 2025-Philip Kimeto Koech vs. Rodah Chebet & Another, at paragraph 3 of the affidavit in support thereof the 1st defendant refers to ELCA E011 of 2025 which are two different matters; and
 - iii. no ground has been disclosed for the grant of the orders of stay to issue.
 14. Pursuant to directions given on 6th November, 2025 to the effect that the two applications be disposed of by way of written submissions, parties filed submissions, which I have read and considered.



15. As pointed out herein above, the plaintiffs through the notice of motion dated 28th July 2025, seek a temporary injunction restraining the defendants by themselves, their agents, employees, cronies or any person acting under their authority and/or instructions, from trespassing, evicting, leasing, charging, removing from or in any manner whatsoever interfering with the two acres of land comprised in the suit property which they occupy.
16. To be granted the order of temporary injunction sought, the plaintiffs/applicant must satisfy the conditions set in *Giella vs. Cassman Brown & Co. Ltd (1973) E.A 360* that to say they must:-
 - i. Show a prima facie case with a probability of success;
 - ii. Demonstrate that unless the an interlocutory injunction is granted, they may suffer irreparable injury, which would not adequately be compensated by award of damages;
 - iii. In case the court is in doubt that unless a temporary injunction is issued they may suffer injury incapable of being compensated by way of damages, they must demonstrate that the balance of convenience tilts in their favour.
17. In the circumstances of this case, the plaintiffs who are in possession and use of a portion of the suit property, particularly two (2) acres of the suit property, pursuant to an alleged sale agreement between them and the defendants, seek protection from interference by the defendants from the portion of the suit property they claim to be entitled to.
18. In his response to the application, the 1st defendant has vehemently denied having sold any portion of the suit property to the defendants. However, in his submissions dated 8th December 2025, the 1st defendant/respondent appears to shift his ground of attack to the sale agreement relied on by the plaintiffs' in support of their suit and application for interlocutory reliefs based on an issue of law not raised in his response to the application namely, contention that the plaintiffs' sale agreements dated 27th June 2020 and 3rd July 2020 were executed six years after a caution was registered by the 1st defendant's second wife, Susan Teriki Kimeto, prohibiting dealings with the suit property.
19. Based on the claim that there existed a caution prohibiting dealings with the suit property when the agreements relied on by the plaintiffs were executed, the 1st defendant submits that the transactions relied on by the plaintiffs to hinge their suit and application for interlocutory reliefs are illegal, null and void hence incapable of forming the basis of grant of the orders sought.
20. As pointed out herein above, the 1st defendant did not make the alleged existence of a caution a ground of attack of the plaintiff's application for temporary injunction. That being the case, he cannot seek to rely on the alleged ground and then claim that the sale of the land is illegal and void. The 1st defendant cannot rely on an issue that was not raised in his pleadings. In *Raila Amolo Raila Amolo Odinga & Another vs. IEBC & 2 Others (2017) Eklr*, the Supreme Court stated/held:-

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.....”.



21. In the instant case, the 1st defendant merely denied having entered into an agreement with the plaintiffs or anybody else in respect of the suit property or any portion. He can only seek to rely on that denial. Concerning that denial or claim, given the fact that the plaintiffs have produced sale agreements said to have been signed between him and them and taking into account that the plaintiffs are in use and occupation of the suit property pursuant to the challenged sale agreements, I am satisfied that the plaintiffs have shown that they have a right in the suit property that this court ought to protect from violation by the defendants pending the hearing and determination of the suit.
22. Taking into account that the plaintiffs have established homes in the portions of the suit property they claim, damages may not adequately compensate the plaintiffs in the event the defendants evict them from the suit property before the suit is heard and determined. The balance of convenience also tilts in favour of the plaintiffs' whose use and occupation of the suit property has not been demonstrated by the defendants to be unlawful, at least at this stage of the proceedings.
23. The upshot of the foregoing is that the plaintiffs have made up a case for being granted an order of temporary injunction to restrain the defendants by themselves, their agents, employees, cronies or any person acting under their authority and/or instructions from trespassing, evicting, leasing, charging, removing from or in any manner whatsoever interfering with the two acres of land comprised in the suit property which they occupy, which order I hereby grant them as sought pending the hearing and determination of the suit. I also award the plaintiffs/applicants the costs of the application.
24. Regarding the application by the 1st defendant, dated 8th October 2025, I do find it to be lacking in merit and I dismiss it with costs to the plaintiffs/respondents.
25. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT BUSIA THIS 31ST DAY OF MARCH, 2026.

L. N. WAITHAKA

JUDGE

In the presence of;

Ms Korir H/B for MR Kiprop for the Plaintiffs

N/A for the Defendants

Court Assistant; Tracy

