



**Kailo & another (Suing as personal representatives of the Estate of Gideon Wakapa Muko - Deceased) v Nkaka & 12 others (Land Case E096 of 2025) [2026] KEELC 1959 (KLR) (24 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1959 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
LAND CASE E096 OF 2025  
MD MWANGI, J  
MARCH 24, 2026**

**BETWEEN**

**JENIPHER LOISE KAILO ..... 1<sup>ST</sup> PLAINTIFF  
JOYCE SIMALOI KUTITA ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS PERSONAL REPRESENTATIVES OF THE ESTATE OF GIDEON  
WAKAPA MUKO - DECEASED**

**AND**

**MUTENGERE OLE NKAKA ..... 1<sup>ST</sup> DEFENDANT  
TOMAN KATURO ..... 2<sup>ND</sup> DEFENDANT  
IBRAHIM OLE SONDAI (SUED AS OFFICIALS OF OLOOLOITIKOSHI  
KITENGALA GROUP RANCH) ..... 3<sup>RD</sup> DEFENDANT  
ISAAC GATHUNGU WANJOHI ..... 4<sup>TH</sup> DEFENDANT  
EDITH WANJIRU GACHOMBA ..... 5<sup>TH</sup> DEFENDANT  
LEE MUNYUA GACHOMBA (5<sup>TH</sup> AND 6<sup>TH</sup> DEFENDANTS SUED AS  
PERSONAL REPRESENTATIVES OF THE ESTATE OF MUNYUA GACHOMBA  
- DECEASED) ..... 6<sup>TH</sup> DEFENDANT  
JIM CHUCHU GACHOMBA (SUED AS PERSONAL REPRESENTATIVES  
OF THE ESTATE OF JIMNAH KIGERA CHARAGU -  
DECEASED) ..... 7<sup>TH</sup> DEFENDANT  
MUTHONI GACHOMBA ..... 8<sup>TH</sup> DEFENDANT  
VIRGINIA WAITHERERO CHARAGU ..... 9<sup>TH</sup> DEFENDANT  
ISAIAH KIRINDI WAMBUGU MUTONYI ..... 10<sup>TH</sup> DEFENDANT**



**WILLIAM SAGOIYO MUKO ..... 11<sup>TH</sup> DEFENDANT**  
**BEJAMIN PASHA PARKEN ALIAS BENJAMIN PASHA**  
**WAKAPA ..... 12<sup>TH</sup> DEFENDANT**  
**PRINCIPAL LAND REGISTRAR, KAJIADO ..... 13<sup>TH</sup> DEFENDANT**

## **RULING**

(In respect of the Plaintiffs' Notice of Motion dated 30th July 2025 seeking an order of temporary injunction)

### **Introduction**

1. Through a Notice of Motion dated 30th July 2025, the Plaintiffs seek the issuance of the following substantive orders through their application brought under the provisions of sections 1A, 3, 3A, and 63(e) of the Civil Procedure Act (Cap 21) and Order 40, Rules 1, 2, and 3 of the Civil Procedure Rules, 2010:
  - a. That this Honorable Court be pleased to grant a temporary injunctive order restraining the Defendants/Respondents whether by themselves, their servants, agents, employees or any other person acting under their instructions from transferring, alienating, disposing of or in any other way dealing or interfering with the parcel of land known as LR Kajiado/Ololoitikoshi/Kitengela/1938 the property of the estate Gideon Wakapa Muko (Deceased) or the partitions and or subdivisions therefrom being parcels of land known as L.R. No Kajiado/Ololoitikoshi/Kitengela/2372, 2373, 3213, 3214, 14718 and 14719 pending the inter-partes hearing of the suit filed herewith.
  - b. That costs of this Application be provided for.
2. The Application is premised on the grounds that on 22<sup>nd</sup> February 1989, the late Gideon Wakapa Muko ("Gideon") was solely allocated and issued a title deed for Kajiado/Ololoitikoshi/Kitengela/1938 by the Ololoitikoshi/Kitengela Group Ranch by virtue of his membership No. 137, as per the group ranch area list. Following the confirmation of the grant of letters of administration issued to the Plaintiffs in Kajiado Chief Magistrate's Court (MCSUCC/E084/2021), the 4<sup>th</sup>, 5<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Defendants sought its revocation. They alleged that the suit property was initially registered in the names of Gideon and Isaac Gathungu Wanjohi ("Isaac"), the 4<sup>th</sup> Defendant herein. According to the 4<sup>th</sup> Defendant's records, he and Gideon were purportedly jointly registered as proprietors of the disputed property on 22<sup>nd</sup> February 1989, with each holding one share. The Plaintiffs note that this was in spite of the fact that the 4<sup>th</sup> Defendant was never a member of the group ranch, nor did he purchase any portion of the suit property from Gideon.
3. The Plaintiffs have accused the 4<sup>th</sup> Defendant of colluding with the 5<sup>th</sup> to 12<sup>th</sup> Defendants to partition the suit property into Kajiado/Ololoitikoshi/Kitengela/2372 (14.17 hectares) and Kajiado/Ololoitikoshi/Kitengela/2373 (44.33 hectares). The former and latter parcels were registered in the names of Gideon and Isaac, respectively, contrary to the purported equal shareholders allegation. According to the Plaintiffs, the 4<sup>th</sup> Defendant falsely asserted that Kajiado/Ololoitikoshi/Kitengela/2372 was subdivided into Kajiado/Ololoitikoshi/Kitengela/3213 and 3214, with the former being sold and transferred to the 10<sup>th</sup> Defendant, while the latter was registered in Gideon's



- name. In their application before the succession cause, the 5th and 9th Defendants contended that in 1993, their late husbands, Munyua Gachomba ("Munyua") and Jimnah Kigera Charagu ("Jimnah"), respectively, jointly purchased Kajiado/Ololoitikoshi/Kitengela/3214, which was later subdivided into Kajiado/Ololoitikoshi/Kitengela/14718 and 14719.
4. It is the Plaintiffs' case that the 4th to 10th Defendants colluded with the 11th and 12th Defendants to disinherit Gideon's rightful beneficiaries. They claim that the 5th to 8th Defendants illegitimately buried Munyua on one acre of the suit property and are currently constructing permanent structures therein. The Plaintiffs argue that the orders sought ought to be issued, as they will not prejudice the Defendants since they have not taken possession of the suit property, save for the 5th Defendant who is undertaking construction. Furthermore, given that the Plaintiffs' case relates to the restoration of the suit property's title and the cancellation of any subdivisions and titles issued to the 4th and 10th Defendants, they assert the orders sought ought to be issued in the interest of justice.
  5. The Plaintiffs' application is supported by the affidavits of Jenipher Loise Kailo and Joyce Simaloi Kutita, sworn on 30th July 2025. The deponents assert that they are Gideon's daughters and the administrators of his estate. In their affidavit, the deponents echo the grounds on the face of the Motion.
  6. Isaac Gathungu Wanjohi, the 4th Defendant, through his Replying Affidavit sworn on 12th September 2025, alleges that as of 22nd February 1989, the registered proprietor of Kajiado/Ololoitikoshi/Kitengela/2373 was Ololoitikoshi/Kitengela Group Ranch until 29th August 1989, when it was jointly registered in his name and that of Gideon. The 4th Defendant asserts that since 29th August 1989, he has been in occupation of the disputed property and even subdivided his portion, Kajiado/Ololoitikoshi/Kitengela/2373, into several portions being Kajiado/Ololoitikoshi/Kitengela/113885 to 113947, with the resultant title deeds having been issued to him. Isaac rebukes the Plaintiffs for concealing from this Court that an order was issued on 29th January 2024 directing the reconstruction of the disputed property's green card and register, prompted by their allegation that the title issued to the deceased had gone missing from the Land Registry records. Based on these assertions, the 4th Defendant prays for the dismissal of the application with costs.
  7. The 5th, 6th, 7th, and 8th Defendants have opposed the application through the Replying Affidavit of Edith Wanjiru Gachomba, sworn on 14th January 2026. The deponent asserts that she is the registered proprietor of Kajiado/Kitengela/14719, which she holds in trust for herself and the 6th to 8th Defendants after it was bequeathed to them pursuant to the succession proceedings in respect of her late husband Munyua's estate. It is contended that the parcel, a resultant subdivision of Kajiado/Kitengela/3214, was sold to Munyua and Jimnah in 1993. Following a transfer effected on 15th September 1993, they jointly became its proprietors in common, with Munyua and Jimnah holding 7 and 5 acres, respectively. The deponent proclaims that the mutation form kept by her late husband shows that Kajiado/Kitengela/2372, a resultant subdivision of Kajiado/Kitengela/1938, was subdivided into Kajiado/Kitengela/3213 and 3214.
  8. The deponent further alleges that in March 2002, Munyua applied for the partition of the parcel into Kajiado/Kitengela/14718 and 14719 because he could not trace the whereabouts of his co-proprietor at the time. Following the registration of Kajiado/Kitengela/14718 and 14719 in the names of Munyua and Jimnah respectively, the 5th Defendant and her husband fenced off their portion, farmed on it, and have continued to peacefully occupy it since 2002. It is affirmed that Munyua was buried in Kajiado/Kitengela/14719 after his demise in December 2017. Additionally, the 5th Defendant has been undertaking the construction of permanent houses and other structures therein since 2019.



9. The 5th Defendant admits that she applied for the annulment of the grant of letters of administration and confirmation because the Plaintiffs colluded with Kajiado Land Registry officials to hide the closed suit property records and obtained a title after the reconstruction of the file by claiming it was lost. Thus, she decries that if the sought injunctive orders are issued, she will be oppressed and unlawfully prevented from enjoying her right to use, farm, and develop Kajiado/Kitengela/14719, despite having done so for 23 years while neither the Plaintiffs' nor Gideon's family have ever utilized or lived on the stated parcel.
10. The 10th Defendant, Isaiah Kirindi Wambugu Mutonyi, through his Replying Affidavit sworn on 12th September 2025, opposes the application and seeks its dismissal with costs, arguing that it was filed in bad faith. He alleges that he became the registered owner of Kajiado/Ololoitikoshi/3213 after purchasing it from Gideon and has since maintained possession and occupation.
11. Through his Replying Affidavit sworn on 13<sup>th</sup> November 2025, the 11th Defendant, a brother to Gideon, proclaims that the deceased was allocated Kajiado/Ololoitikoshi/Kitengela/1938 by virtue of his membership in the Ololoitikoshi/Kitengela Group Ranch. He states that Gideon sold his land, the 11th Defendant had no control over what Gideon did with it.
12. The 12th Defendant, Benjamin Pasha Parken alias Benjamin Pasha Wakapa, has denied the allegations leveled against him through his Replying Affidavit sworn on 13<sup>th</sup> October 2025. He states that he filed an application in MCSUCC/E084/2021 seeking the revocation/annulment of the Grant because he was left out of the list of beneficiaries despite his entitlement under customary law.

### **Court's Directions**

13. The Court directed that the application be canvassed through written submissions. The submissions of which have been duly considered in the writing of this ruling.

### **Determination**

14. The Plaintiffs' application seeks the issuance of a temporary injunction to restrain the Defendants from transferring, alienating, disposing of, or interfering with the parcel of land known as L.R. Kajiado/Ololoitikoshi/Kitengela/1938 and its subsequent partitions and subdivisions pending the inter-partes hearing and determination of the suit.
15. The jurisdiction of this Court to grant a temporary injunction is anchored in Order 40, Rule 1 of the Civil Procedure Rules, 2010, which provides verbatim:

“Where in any suit it is proved by affidavit or otherwise— (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”



16. The guiding principles applicable in determining whether or not to grant an interlocutory injunction were articulated by the Court of Appeal in *Nguruman Limited v. Jan Bonde Nielsen & 2 others* [2014] eKLR, where the Court held that:

“The applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, *prima facie*, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

17. Applying the first limb of the *Nguruman* case test to the facts of the matter at hand, the Plaintiffs bear the burden of establishing a *prima facie* case. The Plaintiffs contend that their late father, Gideon, was the sole allottee of the suit property by the Olooloitikoshi/Kitengela Group Ranch. Conversely, the 4th Defendant asserts, and relies on a green card indicating that the suit property was jointly registered in his name and Gideon's on 29th August 1989. Further documentary evidence adduced by the 5th and 10th Defendants demonstrate subsequent subdivisions and transfers resulting in titles L.R. Kajjado/Olooloitikoshi/Kitengela/14718, 14719, and 3213. Given the conflicting evidence regarding the initial joint registration and the validity of the subsequent subdivisions, there exist triable issues of fact concerning the legitimacy of the titles that can only be conclusively resolved at a full hearing.
18. On the second and third limbs of the test regarding irreparable injury and the balance of convenience, the Court must evaluate the current status of the suit property to determine the appropriate equitable relief. The Plaintiffs seek to prevent the disinheritance of the estate, yet the evidence on record demonstrates competing proprietary and possessory rights.
19. The 1st Plaintiff's supporting affidavit (paragraphs 14 and 18) concedes that the 5th Defendant is currently in physical occupation of a portion of the suit property, is actively constructing permanent structures, and that her late husband, Munyua, was buried on the premises. The 5th Defendant corroborates these facts in her Replying Affidavit (paragraphs 12 and 13). Concurrently, the 10th Defendant avers that he is in present possession and occupation of L.R. Kajjado/Olooloitikoshi/Kitengela/3213 following his alleged purchase.
20. The evidential material before the Court confirms that the Defendants are already in occupation and possession of various portions of the subdivided property. Granting the temporary injunction as framed by the Plaintiffs would essentially alter, rather than preserve, the existing state of affairs by acting as a temporary eviction. The court does not therefore consider it appropriate to grant the orders sought. The application by the Plaintiffs is dismissed. The costs shall be in the cause.

Orders accordingly.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24<sup>TH</sup> DAY OF MARCH 2026.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:



Mr. Muriithi h/b for Mr. Nzaku for the Plaintiffs

Mr. Mindo for the 4<sup>th</sup> and 10<sup>th</sup> Defendants

Mr. Mariaria for the 5<sup>th</sup> – 8<sup>th</sup> Defendants

Mr. Mbeche for the 11<sup>th</sup> and 12<sup>th</sup> Defendants

N/A by the 1<sup>st</sup> - 3<sup>rd</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 13<sup>th</sup> Defendants

Court Assistant: Mercy

**M.D. MWANGI**

**JUDGE**

