

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. E127 OF 2025

SAROJ R. DHANANI 1ST

PLAINTIFF/APPLICANT

RAVI DHANANI (Suing as the Administrator of the Estate of Vijaykumar Dharamshi (Deceased)).....2ND PLAINTIFF/APPLICANT

VERSUS

JOHN K. OLE MUSEI 1ST

DEFENDANT/RESPONDENT JASON KOILEKEN SEKI

2ND DEFENDANT/RESPONDENT LAND REGISTRAR, KAJIADO

WEST3RD DEFENDANT/RESPONDENT THE ATTORNEY

GENERAL4TH DEFENDANT/RESPONDENT

RULING

(In respect of the application by the Plaintiffs/Applicants for an order of temporary injunction and the application by the 1st and 2nd Defendants seeking the variation of the interim orders granted earlier in this matter)

Introduction

1. This ruling pertains to two concurrent applications brought before this Honourable Court for determination. The first is the Notice of Motion application dated 29th September 2025, filed by the 1st and 2nd Plaintiffs. The second is the Notice of Motion application dated 14th November 2025, filed by the 1st and 2nd Defendants.
2. The two applications have been canvassed concurrently.

The Plaintiffs' application

3. The Plaintiffs approached this Court seeking protective orders primarily targeting the preservation of the suit property. In their Notice of Motion dated 29th September 2025, the Plaintiffs sought the following orders:
 - a. SPENT
 - b. SPENT
 - c. **THAT** an order of injunction be issued restraining the Defendants, their agents and/or servants and/or any person holding title deed on or emanating/originating from the property known as KAJIADO/NTASHART/511 from trespassing, selling, disposing, transferring, interfering and/or dealing in any

other manner whatsoever with the said parcels of land pending the hearing and determination of the suit herein.

- d. **THAT** an order of injunction be issued compelling the 3rd Defendant/Respondent to provide records of the suit property being KAJIADO/NTASHART/511 and all other subsequent subdivision including copies of green cards.
 - e. **THAT** an order allowing the Plaintiffs/Applicants to publish a Notice on two newspapers with national circulation inviting all the interested parties holding title deeds resulting from land title number KAJIADO/NTASHART/511 or any subsequent subdivision thereof to file their responses.
 - f. **THAT** the Officer Commanding Station, Kibiku/Ngong Police Station to facilitate enforcement of orders (2) and (3) above.
 - g. **THAT** the costs of this application be awarded to the Plaintiffs/Applicants.
4. This application is grounded on the Supporting Affidavit of Ravi Dhanani, wherein he alleges that the 1st and 2nd Defendants fraudulently duplicated the title deed for KAJIADO/NTASHART/511

and subdivided the property into portions that were transferred to unsuspecting third parties.

5. The 1st and 2nd Defendants opposed the application by filing a Replying Affidavit sworn by John K. Ole Musei on 11th November 2025. The Defendants assert that they are bona fide proprietors who legally purchased the land for valuable consideration from one Samuel Lekatooni (deceased) and lawfully subdivided it. The Plaintiffs responded with a Further Affidavit on 19th January 2026, maintaining that the root of the Defendants' title was unlawful and irregular.

The 1st and 2nd Defendants' application

6. On 30th October 2025, this Court granted a temporary injunction restraining the Defendants and persons holding emanating titles from dealing with the properties pending the hearing of the Plaintiffs' application. In response, the 1st and 2nd Defendants filed the Notice of Motion dated 14th November 2025, seeking to vary and stay those orders. They sought the following orders:

- a. SPENT

- b. SPENT

- c. THAT upon hearing this Application, an order do issue staying execution and/or varying/setting aside the Orders issued by Hon. Justice M.D. Mwangi on 30th October 2025 in respect of land reference KAJIADO/NTASHART/511 pending the hearing and determination of the Plaintiffs' Notice of Motion dated 29th September 2025.
- d. THAT this Honourable Court be pleased to direct the Officer Commanding Police Station (OCS) Kibiku Police Station to enforce the orders staying/vacating the injunction and to ensure that no person interferes with the lawful owners and occupiers of the various subdivisions of the former land parcel KAJIADO/NTASHART/511 pending the hearing and determination of the suit.
- e. THAT costs of this Application be provided for.
7. This application is predicated on the Supporting Affidavit of John K. Ole Musei, arguing that the mother title KAJIADO/NTASHART/511 no longer exists and that the enforcement of the injunction would cause irreparable loss and chaos to numerous innocent third-party purchasers who currently hold registered titles to the subdivisions.

8. The Plaintiffs opposed the Defendants' application via a Replying Affidavit sworn by Ravi Dhanani on 19th January 2026. The Plaintiffs countered that third parties had already been put on notice regarding the suit via advertisements in newspapers of nationwide circulation and that the preservation orders are necessary to prevent further damage.

Directions

9. The applications were canvassed by way of written submissions. The said submissions have been duly considered in the writing of this ruling.

Analysis and Determination

10. I have carefully considered the two rival applications, the affidavits in support and opposition thereto, and the written submissions filed by the parties. The central issue for determination is whether the Plaintiffs/Applicants have satisfied the legal threshold for the grant of interlocutory injunctive and preservative orders, and conversely, whether the Defendants/Applicants have demonstrated sufficient cause to warrant the setting aside or variation of the interim orders issued on 30th October 2025.

11. The principles governing the grant of interlocutory injunctions are now well settled. While the classical test in *Giella v Cassman Brown* remains foundational, courts have, in recent jurisprudence, refined and supplemented that test, particularly in land disputes where the substratum of the suit is at risk.

12. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal emphatically stated:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:

- (a) establish his case only at a prima facie level,*
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and*
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.”*

The Court further clarified that:

“These are three distinct and sequential hurdles which the applicant is expected to surmount sequentially... If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”

13. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003]

eKLR, a prima facie case was defined as:

“A case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

14. In disputes involving land and competing titles, the Court of Appeal in

Munyu Maina v Hiram Gathiha Maina [2013] eKLR held:

“When a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title... the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title.”

15. This principle is reinforced by statute. Section 26(1) of the **Land Registration Act, 2012** provides:

“The certificate of title issued by the Registrar... shall be taken by all courts as prima facie evidence that the person named as proprietor... is the absolute and indefeasible owner... subject to the encumbrances... and the title of that proprietor shall not be subject to challenge, except— (a) on the ground of fraud or

misrepresentation to which the person is proved to be a party; or (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

16. The Plaintiffs allege that the original title KAJIADO/NTASHART/511 was fraudulently duplicated and subsequently subdivided, resulting in multiple derivative titles issued to third parties. They challenge the root of the Defendants' title as unlawful and irregular. On the other hand, the Defendants assert bona fide purchase for value from a deceased proprietor and maintain that the subdivisions were lawful.

17. At this interlocutory stage, the Court is not required to make definitive findings. However, the allegation that the root of title is tainted by fraud and illegality brings the matter squarely within the ambit of Section 26(1)(a) and (b) of the Land Registration Act.

18. Applying the holding in *Munyu Maina (supra)*, the burden shifts to the Defendants to demonstrate the legality of their root of title beyond mere production of title deeds. That issue can only be conclusively resolved at trial upon full evidentiary interrogation.

19. In the circumstances, I am satisfied that the Plaintiffs have established a prima facie case with a probability of success.

20. The suit property has already undergone subdivision and transfer to multiple third parties. The Plaintiffs contend that unless preservative orders are issued, further dealings will continue, thereby compounding the alleged illegality and rendering the suit nugatory.

21. The Court of Appeal in **Kenleb Cons Ltd v New Gatitu Service Station Ltd & Another [1990] eKLR** held:

“To succeed in an application for injunction, an applicant must show... that he stands to suffer irreparable loss which cannot be adequately compensated by an award of damages.”

22. Land, by its very nature, is unique and irreplaceable. Where ownership is contested and titles are proliferating, damages are not an adequate remedy. Continued alienation risks creating an irreversible chain of transactions involving innocent purchasers, thereby complicating or defeating the ultimate adjudication.

23. I am therefore persuaded that the Plaintiffs stand to suffer irreparable harm if the suit property is not preserved.

24. The Defendants argue that the mother title no longer exists and that numerous third parties would be affected by the injunction. However, the Plaintiffs have demonstrated that notices have already

been issued to interested parties and that the orders sought are aimed at halting further transactions rather than dispossessing current occupants.

25. In **Suleiman v Amboseli Resort Limited [2004] eKLR**, the Court held:

“The court in responding to prayers for interlocutory relief should always opt for the lower rather than the higher risk of injustice.”

26. Preserving the status quo pending hearing minimizes the risk of injustice. Allowing continued dealings would escalate the dispute and potentially defeat the Court’s ability to render an effective judgment. Accordingly, the balance of convenience tilts in favour of preserving the property as it currently stands.

27. The Defendants seek to set aside or vary the orders issued on 30th October 2025. The applicable principle is that an interlocutory order may only be discharged where there is material non-disclosure, misrepresentation, or a change in circumstances.

28. In **Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others [1996] eKLR**, the Court held:

“The court has inherent jurisdiction to discharge an interlocutory injunction where it is just to do so... but such jurisdiction must be exercised judicially.”

29. The Defendants have not demonstrated any material non-disclosure or new circumstances that would justify setting aside the orders. Their arguments largely reiterate matters already in contest, which are properly reserved for trial.

30. This Court is enjoined to ensure that the subject matter of litigation is preserved pending determination. In **Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another [1987] eKLR**, the Court observed:

“The purpose of an interlocutory injunction is to preserve the subject matter in situ until the suit is heard and determined.”

31. Given the multiplicity of titles emanating from the suit property and the serious allegations raised, preservation orders are not only appropriate but necessary to safeguard the substratum of the dispute.

This court proceeds to make the following orders:

- A. The Plaintiffs' Notice of Motion dated 29th September 2025 is hereby **allowed** in terms of prayers seeking preservative and injunctive relief.
- B. An order of temporary injunction is hereby issued restraining the Defendants, their agents, servants, and any persons claiming under them from trespassing, selling, transferring, disposing of, or in any manner dealing with land parcel **KAJIADO/NTASHART/511** and **all subdivisions emanating therefrom** pending the hearing and determination of this suit.
- C. The 3rd Defendant is hereby directed to provide complete records relating to the suit property, including all subdivisions and corresponding green cards.
- D. The Plaintiffs are granted leave to publish notices in two newspapers of national circulation inviting all persons holding titles derived from the suit property to participate in the proceedings (if not already done).
- E. The Officer Commanding Station, Kibiku/Ngong Police Station, shall facilitate enforcement of these orders.

F. The 1st and 2nd Defendants' Notice of Motion dated 14th November 2025 is hereby **dismissed**.

G. The Costs of both applications shall be in the cause.

It is so ordered.

Dated, Signed and Delivered Virtually this 30th Day of April, 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Baragu for the Plaintiffs/Applicants

Mr. Musa h/b for Mr. Imbugwa for the 1st and 2nd Defendants/Respondents

N/A by the 3rd and 4th Defendants

Court Assistant: Alex

M.D. MWANGI
JUDGE