

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELC CASE NO. E019 OF 2025 (OS)

SIMION KIBET KOECH.....
....PLAINTIFF

VERSUS

ALICE CHEPKEMOI TERER.....1ST
DEFENDANT

SAMWEL KIPROTICH KOECH.....2ND
DEFENDANT

RULING.

Introduction.

- 1.** This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 8th September, 2025. The application is expressed to be brought under **Sections 1A, 1B, 3 & 3A** of the Civil Procedure Act and **Order 40 Rules 1 & 4** of the Civil Procedure Rules.

- 2.** The application seeks the following orders;
 - a. Spent**
 - b. Spent**
 - c. Spent**

d. That pending hearing and determination of this suit, this Honourable Court do issue a temporary injunction restraining and or otherwise prohibiting the 1st and/or 2nd Defendants, their servants, agents and/or employees from selling, gifting, transferring, dealing, pledging, encumbering, subdividing, trespassing or otherwise entering or remaining on and or evicting the Plaintiff from and or interfering in any manner whatsoever with the Plaintiff's current possession and occupation of the suit property herein or any part thereof, and or uprooting the 2000 existing tea bushes and trees planted thereon.

e. That costs of this application be provided for.

- 3.** The application is based on the grounds on its face and the Supporting Affidavit of **Simion Koech** sworn on 8th September, 2025.

Factual Background.

4. The Plaintiff/Applicant commenced the present proceedings

vide the Plaint dated 7th August, 2025 wherein he seeks the following prayers;

a. A Declaration do hereby issue that the Plaintiff has been in quiet and exclusive possession of all those parcels of land measuring 0.08 acres, 0.045 acres, 0.2 acres, 0.05 acres and 0.1 acres the full size of which comprises the parcel of land measuring 0.475 acres or thereabouts (hereinafter referred to as “the suit land”), part of the land parcel currently known as Kericho / Kapsuser /8015, a subdivision of the land parcel formerly known as Kericho/Kapsuser/468, that he currently occupies and possesses and has so done for a period of over 12 years;

- b. A Declaration do hereby issue that the 1st and or 2nd Defendant (sic) holds the suit land in trust for the Plaintiff;**
- c. A Declaration do hereby issue that the Plaintiff has as such acquired bona fide title to the suit land;**
- d. A Declaration do hereby issue that the Plaintiff is entitled to be registered, as the proprietor of the suit land;**
- e. A Declaration, pursuant to (a), (b), (c) and (d) above, do issue that any title respecting the suit land and currently registered in the name of the 1st and or 2nd Defendant (sic), the unspecified new buyer and or any other person be cancelled and the name of the Plaintiff be registered as proprietor thereof.**
- f. A Declaration do hereby issue that the subdivision, transfer and registration of the suit land in favour of the unspecified new buyer or any other person is unlawful and fraudulent therefore null and void.**
- g. An Order, pursuant to (a), (b), (c), (d), (e) and or (f) above or in alternative thereto, do issue that the suit land be**

subdivided from the land parcel currently known as Kericho / Kapsuser /8015, a subdivision of the land parcel formerly known as Kericho / Kapsuser /468, and its registration be immediately transferred to the name of the Plaintiff.

h. Without prejudice to the foregoing and in alternative thereto, General, Special and or Exemplary Damages and a refund of the purchase price paid for the subject land parcels alongside the actual value of all improvements on the said disputed land parcels.

i. Costs of this suit.

j. Interest at Court rates on (h) and or (i) above.

k. Any other or further relief that this Honourable Court may deem fit and just to grant.

5. As at the time of writing of this ruling, none of the Defendants/Respondents have filed their Statements of Defence.

6. The application under consideration first came up for hearing on 15th September, 2025 when the Court issued directions that it be served upon the Respondents.
7. The application came up for hearing on 5th November, 2025 which hearing was rescheduled to 2nd February, 2026.
8. Despite the Defendants/Respondents being served, On 2nd February, 2026, when the application came up for hearing, they were absent. Counsel for the Plaintiff/Applicant informed the Court that he would not be filing submissions and prayed that the Court favour them with a date for ruling.

The Plaintiff/Applicant's Contention

9. The Plaintiff/Applicant contends that the Defendants/Respondents are the beneficial owners of land parcel No. **Kericho/Kapsuser/8015** which is one of the resultant subdivisions of land parcel No. **Kericho/Kapsuser/468.**

10. The Plaintiff/Applicant also contends that he purchased several portions of land parcel No. **Kericho/Kapsuser/8015** from the 2nd Defendant/Respondent. He goes on to state that the portions he purchased measure 0.08 acres, 0.045 acres, 0.2 acres, 0.05 acres & 0.1 acres and adds they were purchased as follows;

a. On 18th December, 2001 vide a land sale agreement of an even date he purchased a portion of the suit land measuring 0.08 acres for Kshs. 26,651/=.

b. On 8th May, 2002 vide a land sale agreement of an even date he purchased a portion of the suit parcel of land measuring 0.045 acres for Kshs. 8,991/=.

c. On 1st February, 2005, vide a land sale agreement of an even date he purchased a portion of the suit parcel of land measuring 0.2 acres for Kshs. 40,000/=.

d. On 16th August, 2006 vide a land sale agreement of an even date he purchased a portion of the suit parcel of land measuring 0.05 acres for Kshs. 300,000/=.

e. On 31st December, 2012 vide a land sale agreement of an even date he purchased a portion of the suit parcel of land measuring 0.1 acres for Kshs. 75,000/=.

- 11.** It is the Plaintiff/Applicant's contention that he has paid the 2nd Defendant/Respondent an aggregate sum of Kshs. 450,642/=.
- 12.** It is also the Plaintiff/Applicant's contention that he has occupied the aforementioned portions of the suit parcel of land for a period of over twelve years.
- 13.** It is further the Plaintiff/Applicant's contention that he has planted 2000 tea bushes on the said parcel of land and a

variety of trees and goes on to state that he sells the harvested tea to Momul Tea Factory.

- 14.** He contends that on or about 28th July, 2025, the Defendants/Respondents demanded immediate payment of an unspecified sum of money which they alleged to be the additional purchase price.
- 15.** He also contends that on 30th August, 2025, the Defendants/Respondents gave him an oral notice requiring him to vacate the suit parcel of land failure to which they would evict him.
- 16.** He further contends that the Defendants/Respondents threatened to uproot his tea bushes and trees and informed him that they had found a new buyer.
- 17.** It is his contention that the Defendants/Respondents intention to sell the said portions of the suit parcel of land to a new buyer are fraudulent.

18. The Plaintiff/Applicant then sets out particulars of fraud as follows;

a. In lieu of the suit land that I actually actually (sic) bought from the 1st and or 2nd Defendant (sic) vide the various agreements dated the 18.12.2001, 8.5.2002, 1.2.2005, 16.8.2006 and 31.12.2012, unlawfully causing the subdivision of the land parcel known as Kericho / Kapsuser /8015, with the intention to transfer and register the same or pieces thereof in the name of the new buyer without my knowledge and or consent and without any other necessary approvals and consents. (sic)

b. In lieu of the suit land that I actually bought from the 1st and or 2nd Defendant vide the various agreements dated the 18.12.2001, 8.5.2002, 1.2.2005, 16.8.2006 and 31.12.2012, purporting to transfer or otherwise sell the said suit land or pieces thereof to the new buyer, without my knowledge

and consent and knowing very well that the same had been sold to me. (sic)

c. Requesting for and obtaining money from me under the false pretence that they would use the said funds to prosecute the Kericho Chief Magistrates Court Succession Cause No. E218 of 2021, a Petition to obtain Letters of Administration, intestate, of the estate of Kiprono Terer (Deceased), to enable them eventually cause the subdivision and transfer of the suit land, which they had beneficiary interest in, from the name of Kiprono Terer (Deceased) and or their names to my name.

d. With an intention to defraud, obtaining money from me or otherwise inducing me to pay them an aggregate sum of kshs. 450,642/= under the false pretence that they will cause the subdivision of the suit land from the land parcel currently known as Kericho/Kapsuser /8015, part of the land parcel formerly known as Kericho/Kapsuser /468, and transfer its registration to my name.

e. Holding out or otherwise representing to me that they had good title to the suit land.

- 19.** It is also his contention that he is advised by his counsel on record that he has acquired portions of the suit parcel of land through adverse possession.
- 20.** It is further his contention that he reported the Defendants/Respondents actions to Kericho Police Station and was given OB No. **08/30/08/2025.**
- 21.** He contends that this suit has high chances of success and he will suffer irreparable damage if the prayers sought are not granted.
- 22.** He also contends that the balance of convenience tilts in his favour.

23. He ends his deposition by stating that Defendants/Respondents will not suffer any prejudice if the prayers sought are granted.

Analysis and Determination.

24. I have considered the Plaintiff/Applicant's application and it is my view that the only issue that arises for determination is whether he has met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.

25. In the judicial decision of **Giella v. Cassman Brown [1973] EA 358**, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;

"The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be

normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the Court is in doubt it will decide an application on the balance of convenience.” (Emphasis mine)

26. The Plaintiff/Applicant must first establish a *prima facie* case. A *prima facie* case was defined in the judicial decision of **Mrao Limited v. First American Bank of Kenya & 2 Others [2003] eKLR** as follows;

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or

rebuttal from the later.” (Emphasis mine)

- 27.** The Plaintiff/Applicant contends that the Defendants/Respondents are the beneficial owners of land parcel No. Kericho/Kapsuser/8015.
- 28.** The Plaintiff/Applicant also contends that he purchased portions of the suit parcel of land from the Defendants/Respondents on various dates at a consideration of Kshs. 450,642/=.
- 29.** The Plaintiff/Applicant further contends that on 30th August, 2025, the Defendants/Respondents asked him to vacate the said portions of the suit parcel of land failure to which they would evict him.
- 30.** It is the Plaintiff/Applicant’s contention that the Defendants/Respondents intend to sell the suit parcel of land to third parties.

31. The Plaintiff/Applicant has attached to his affidavit in support of the application a copy of the green card for land parcel No. Kericho/Kapsuser/8015. It shows that the said parcel of land is a resultant subdivision of land parcel No. 468. Entry No. 1 is dated 21st December, 2023 when **Alice Chepkemoi Terer** was registered as the owner to hold in trust for the following children;

- a. Samwel Koech**
- b. Reuben Koech**
- c. Rose Chepkwony**
- d. Hellen Chebet Kirui**
- e. Betty Chelangat Siongok**
- f. Mercy Chepkoskey.**

32. Entry No. 2 is also dated 21st December, 2023 when the title deed was issued.

33. The Plaintiff/Applicant has also attached a copy of the green card for land parcel No. **Kericho/Kapsuser/468**. It shows that the land measures 3.8 Ha and entry No. 5 shows that it

was closed upon subdivision into land parcel No's 8009 to 8015.

34. The Plaintiff/Applicant has attached two hand written agreements dated 18th December, 2001 and 8th May, 2002. The said agreements state that **Samwel Kiprotich Koech** sold his land to **Simion Koech**. The agreement dated 18th December, 2001 states that **Simon Koech** paid kshs. 26,651 while in the agreement dated 8th May, 2002, **Simon Koech** paid kshs. 8,991/=. Both agreements are signed and witnessed.

35. The Plaintiff/Applicant has also attached land sale agreements dated 1st February, 2005, 16th August, 2006 and 31st December, 2012. The agreements are between **Samwel Koech** and **Simion Koech** and they are for the sale of portions of land whose description is not legible.

36. From the documents attached to the affidavit in support of the application, it is evident that land parcel No.

Kericho/Kapsuser/8015 whose portions the Plaintiff/Applicant alleges to have purchased is registered in the name of the 1st Defendant/Respondent who is holding it in trust for some children.

- 37.** It is also evident that some of the land sale agreements attached to the affidavit in support of the application do not disclose the parcel of land being purchased while in the other sale agreements, the description of the parcel of land being sold is not legible.
- 38.** The Plaintiff/Applicant has also attached a copy of a Report and Valuation of land parcel No. **Kericho/Kapsuser/8015** which report is dated 28th July, 2025. The report is prepared by Acre Point Realtors Ltd.
- 39.** At page 4 of the said report, **Simion Kibet Koech**, the Plaintiff/Applicant is stated to be in possession of a 0.475-acre portion of land parcel No. **Kericho/Kapsuser/8015**.

40. At page 7 of the said report, it is stated that the Plaintiff/Applicant has planted assorted trees and 2000 mature tea bushes that are twenty-four years old.
41. At page 18 of the report, there are pictures of trees and a tea plantation of the portion of the suit parcel of land that the Plaintiff/Applicant is alleged to be in possession of.
42. The Plaintiff/Applicant has also attached a letter dated 23rd July, 2025 that is from the Department of Agriculture, Livestock and Fisheries. The letter is written by **Benjamin Rotich** (WAO) for the sub county Agricultural Officer, Belgut Sub County.
43. The letter states that **Simion Koech** is a beneficiary of ***"Plot No. Ker/Kap 468 -8015"***
44. The letter states that the Plaintiff is in occupation of a 0.475-acre portion of the said parcel of land where he planted 2000 tea bushes in the year 2001.

45. From the documents attached to the affidavit in support of the application, it is evident that the Plaintiff/Applicant is in possession of a portion of land parcel No. **Kericho/Kapsuser/8015.**

46. Given the said circumstances, I find that the Plaintiff/Applicant has established a *prima facie* case.

47. The second condition for grant of orders of temporary injunction is that the Plaintiff/Applicant must demonstrate that he will suffer irreparable injury that cannot be adequately compensated by way of damages.

48. In **Nguruman Limited v. Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal pronounced itself as follows:

“On the second factor, 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 face, 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.” (Emphasis mine)

49. The judicial decision in **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR** provides an explanation for what is meant by irreparable injury. It is as follows;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.” (Emphasis mine)

50. The Plaintiff/Applicant contends that he will suffer irreparable loss if the prayers sought are not granted. He does not explain and/or has failed to demonstrate that the injury he is

likely to suffer is such that cannot be adequately compensated by an award of damages.

- 51.** If after making considerations on the existence of a *prima facie* case and irreparable injury the Court is still in doubt, then an application for temporary injunction is to be determined on the basis of balance of convenience.
- 52.** The Plaintiff/Applicant has demonstrated a *prima facie* case but has failed to demonstrate that he is likely to suffer irreparable injury if the orders sought are not granted. I shall therefore determine this application on the basis of balance of convenience.
- 53.** In **Pius Kipchirchir Kogo v Frank Kimeli Tenai [supra]** the Court held as follows;

"The meaning of balance of convenience will favour of the Plaintiff' is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience

caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it” (Emphasis mine)

- 54.** The Plaintiff/Applicant contends that he purchased portions of the suit parcel of land from the 2nd Defendant/Respondent

and has attached various land sale agreements in support of the said contention.

- 55.** From the documents attached to the affidavit in support of the application, I am persuaded that the Plaintiff/Applicant is in possession of a portion of land parcel No. Kericho/Kapsuser/8015 and is growing tea and trees on it.
- 56.** It is important to note that the suit parcel of land is registered in the name of **Alice Chepkemai Terer** who is holding the said parcel of land in trust for persons listed in the foregoing paragraphs, the 2nd Defendant/ Applicant being one of them.
- 57.** Given the said circumstances, it is my view that the balance of convenience tilts in favour of the Plaintiff/Applicant.

Disposition

58. Taking the foregoing into consideration, I find that the Plaintiff/Applicant has satisfied the conditions for grant of an order of temporary injunction.

59. Consequently, the application dated 8th September, 2025 is allowed in the following terms:

a. An order of temporary injunction is hereby issued against the 1st and 2nd Defendants/Respondents restraining them, their servants, agents and/or employees from selling, gifting, transferring, dealing, pledging, encumbering, subdividing, trespassing or otherwise entering or remaining on and/or evicting the Plaintiff/Applicant from interfering in any manner whatsoever with the Plaintiff/Applicant's current possession and occupation of the suit property herein or any part thereof, and/or uprooting the 2000 existing tea bushes and trees planted thereon pending the hearing and determination of this suit.

***b. The costs of this application shall
abide the outcome of the suit.***

60. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 30TH DAY OF APRIL, 2026.**

**L. A. OMOLLO
JUDGE.**

**In the presence of: -
Parties - Absent
Mr. Makori- Court Assistant**