



REPUBLIC OF KENYA



KENYA LAW
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**Kakuko v Kakuko (Environment and Land Case E008 of 2026)
[2026] KEELC 2441 (KLR) (29 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2441 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E008 OF 2026**

CK NZILI, J

APRIL 29, 2026

BETWEEN

MESHACK PASKONY KAKUKO PLAINTIFF

AND

JOYCE KAKUKO DEFENDANT

RULING

1. By an application dated 5/2/2026, the applicant has asked the court to:
 - a. ...spent
 - b. Stop the subdivision process of the land comprised in parcel No. West Pokot /Keringet 'A' /2539 and the transfer of any parcel that may have been subdivided from the said parcel No. 2539, and an injunction restraining the respondent from selling, disposing, leasing, or in any other way interfering with the applicant's use of 10 acres, which the applicant has been utilising for cultivation since 1996.
 - c. Confirm the interim order in place or grant the said orders in terms of prayer (b) above, pending the hearing and determination of the pending suit.
 - d. Issue and order directing the Land Registrar, West Pokot, not to register any transactions relating to land parcel No. West Pokot/Keringet 'A' /2539, while pending the hearing and determination of the suit.
 - e. Costs.
2. The application is premised on the grounds of its face and in the affidavit sworn by Meshack Paskony of even date. The applicant deposes that he is a biological son of the respondent and the late Joshua Kakuko, who died on 6/6/1995, survived by 3 out of his 6 wives. The applicant deposes that the



- respondent, who had separated from his late father in 1972, and only in 2000, when the applicant brought her back and built her a house.
3. The applicant avers that the respondent returned home with 3 more sons who were not sons of their late father, hence beneficiaries to the estate.
 4. The applicant deposes that a succession cause over the estate of his late father was filed in court vide Kitale HC P&A No. 13 of 1998, where the applicant was appointed alongside Jackson Magal Kakuko, Joseph Mnagat Kakuko (deceased), and William Piro. The applicant states that upon confirmation of the grant on 10/5/2001, the land parcel No. West Pokot/Keringet 'A' /106, which had belonged to his late father, was shared equally among six houses, each represented by the six wives of the deceased.
 5. The applicant deposes that together with his late brother Emmanuel Ksang, they were registered as owners of the land parcel No. West Pokot/Keringet 'A'/2539, measuring 9.3 hectares (23.143 acres), and were issued with a title deed on 19/7/2005.
 6. The applicant states that they were to hold the land in trust for the beneficiaries of their late father, as well as the respondent, whose name had been listed in the affidavit filed in support of the petition to include the applicant, Alina Chelimo Kakuko (deceased), Jennifer Chepkerker Kakuko, and Alice Chapkeo Kakuko.
 7. Further, the applicant deposes that the respondent in application dated 24/8/2020, sought an order from the succession court, Kitale HC P&A Cause No. 13 of 1998, which was later transferred to Kapenguria as Kapenguria HC P&A Cause No. 1 of 2021), seeking inter alia, an order that the title issued to the applicant and his brother be cancelled, and the same to be issued in her name. The applicant deposes that the said title deed was cancelled and issued to the respondent on 24/4/2024, before the hearing and determination of the application.
 8. The applicant deposes that the registration of the defendant was registered as the owner of land parcel No. West Pokot/Keringet 'A' /2539, in trust for herself and in trust for the surviving and recognised beneficiaries of the 6th house, which she now represented.
 9. Further, the applicant deposes that the respondent, in breach of the trust, has unilaterally and without any order from the succession court applied to subdivide the land comprised in parcel No. West Pokot/Keringet 'A'/2539 into five portions measuring 2.03 ha, 0.81 ha, 0.87 ha, 3.15 ha, and 2.03 ha, respectively.
 10. The applicant deposes that a consent was issued to the respondent by the Land Control Board on 15/1/2026, and the respondent may transfer the new parcels to 3rd parties to the detriment of the lawful beneficiaries, who have yet to discuss the issue of subdivision in the succession court.
 11. The applicant deposes that he stands to lose his inheritance, yet he has a prima facie case, and an award of damages would not be an efficacious remedy.
 12. The applicant has attached copies of his identification card, death certificate, title extract, the petition, affidavit, grant, certificate of confirmation, certificate of title, search certificate, application dated 24/8/2020, search dated 24/4/2024, and a copy of the restriction presented to the land registrar, who declined to register the same as annexures marked MPKI - MPK9.
 13. The respondent has opposed the application through a replying affidavit sworn on 19/2/2026. She deposes that as the 6th wife of the late Joshuo Kakuko, they were blessed with 5 children. The respondent deposes that all the wives of the deceased lived on West Pokot/Keringet 'A'/106, and



- thereafter, they embarked on succession proceedings and a grant was confirmed on 10/5/2001, leaving out Plot A/15.
14. The respondent deposes that after the grant had been confirmed, the process of subdivision began on West Pokot/Keringet 'A' /106, which was subdivided into twelve portions, from the parcel numbers 2531 to 2542, and the portion of land meant for the 6th house was land parcel West Pokot/Keringet 'A'/2539. The respondent deposes that the applicant declined to have the same transferred in her name. Instead, he proceeded to have the title deed transferred in his name and Emmanuel Ksang Kakuko, excluding her and her daughter, who he said did not have any property rights, contrary to the court's orders, prompting her to place a caution on the parcel.
 15. The respondent states that she moved the succession court to revoke the grant and have the 6th house's property transferred to her name. She deposes that she also lodged a complaint with the land registrar, who summoned the applicant, who declined to surrender the title deed to West Pokot/Keringet 'A'/2539, leading to its cancellation and a new title deed being issued in her name. The respondent deposes that she proceeded to withdraw the application for revocation of the grant, since it had been overtaken by events.
 16. Further, the respondent states that due to the long-standing dispute with his son, she called for a family meeting, which the applicant failed to attend, prompting her to seek the land control board's consent to have West Pokot/Keringet 'A'/2539 subdivided among all her children.
 17. The respondent avers that the land has already been subdivided into West Pokot/Keringet 'A'/5774-7778 has already taken place and only transfers are pending, a process halted by the current application.
 18. The respondent deposes that the applicant is not on 10 acres as he alleges, but he is utilising approximately 4 ½ acres, and his home is on land measuring approximately 1 acre. She deposes that she cultivates 4 acres, and Jennifer Kakuko cultivates land measuring 4 ½ acres where she has planted nappier grass and hay, while the remaining land is left as a grazing field.
 19. Further, the respondent deposes that she never deserted her matrimonial home and all her children were born thereon, and that at no point did the applicant construct a house for her. She avers that she has no intentions of selling the land, but the applicant has sold the 6th house's share in West Pokot/Serewo/Serewo/3.
 20. Copies of the letters of administration, order and Certificate of confirmation, Green card for West Pokot/Keringet 'A'/106, green card, and official search, application for revocation of grant, letters, copies of the proceedings in Kapenguria HCC.E001 of 2021, application for land control board to subdivide the parcel into 5 portions, mutation forms, and letter of consent, green cards, land sale and sketch maps land in Serewo, are attached as annexures marked JKJI - JKJ10.
 21. In a further affidavit sworn on 21/2/2026, the applicant deposes that the respondent has admitted to holding the title deed No. 2539 in trust. He also insists his sisters have land elsewhere.
 22. In written submissions dated 21/2/2026, the appellant relies on Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act* to submit that this court has the jurisdiction to hear and determine this application. Further, the applicant submits that he has met the threshold set in *Giella -vs- Cassman Brown & Co Ltd* [1973] EA 358, *Mrao Ltd -vs- First American Bank of Kenya Ltd* [2003] KLR, and *Nguruman Limited -vs- Jan Bonde Nielsen & 2 Others* [2023] KECA.
 23. The applicant submits that Section 28(b) of the *Land Registration Act* recognizes trusts as overriding interests that need not be noted in the register. Further, the applicant submits that under Section 68



of the *Land Registration Act*, this court has the power to issue inhibition orders restraining dealings in land pending the determination of a dispute.

24. The respondent, on the other hand, relies on a written submission dated 20/2/2026. She submits that the disputed issue is on the issuance of the title deed and in whose name. The respondent relies on Sections 24, 25, and 26 (1) of the *Land Registration Act*, that she has absolute ownership as the 6th wife of the deceased, and her title is indefeasible save if fraud, misrepresentation, or illegality is proved.
25. Further, the respondent relies on Section 79 of the *Land Registration Act* to submit that she lodged a complaint with the land registrar to rectify the title issued to the applicant and her late son.
26. She also submits that the proposed mode of distribution is evident that the applicant is not being disinherited, thus the allegations that he stands to lose his share of inheritance are also false. The respondent submits that the applicant's allegations of the land being sold to third parties are mere falsehoods that he has not substantiated.
27. On 23/2/2026, the court issued an inhibition order pending this ruling.
28. Having considered the application, reply, and submissions, the following issues arise for determination:
 - a. Whether the applicant has met the threshold for the grant of orders of temporary injunction, pending the hearing and determination of the suit.
 - b. Whether an order of inhibition should issue pending the hearing and determination of the suit.
 - c. Who should bear the costs of the application?
29. In *Giella -vs- Cassman Brown* (supra), the court held that an applicant must show a prima facie case with probability of success. Secondly, an interlocutory injunction will not be granted unless the applicant stands to suffer an irreparable injury, which would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.
30. An applicant has to first establish a prima facie case. A prima facie case, as defined in *Mrao Limited -vs- First American Bank* (supra), includes but is not confined to a “genuine or arguable” 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, to call for an explanation or rebuttal from the later.
31. The applicant has argued that he is a beneficiary of parcel number West Pokot/Keringet 'A'/2539, which the respondent acquired through succession, and the same is subject to the overriding interest of a trust which the respondent is disregarding by the intended disposal.
32. An applicant has to demonstrate that he will suffer irreparable injury that would not be adequately compensated by way of damages. In *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* [2018] eKLR, the court held that irreparable injury means an injury that cannot be adequately compensated in damages and that the existence of a prima facie case is not itself sufficient.
33. The applicant must further show that irreparable injury will occur to him if the order of injunction is not granted, and there is no other remedy open to him.
34. In this application, the applicant argues that no two parcels are similar, and if the land is transferred to third parties, it will complicate the title, create multiplicity of suits, and potentially defeat his beneficial claim permanently.



35. On the balance of convenience, an applicant must demonstrate that the balance of convenience tilts in his favour as held in Pius Kipchirchir Kogo (supra). The applicant 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.
36. In the instant application, the applicant has submitted that the balance tilts in favour of granting an order to maintain the status quo, since if denied, the land will be fully subdivided and transferred, rendering the suit academic.
37. From the annexure marked JKJ 9 and 10, the respondent has stated that the alleged transfer is to the beneficiaries of the estate of the deceased and not to third parties. The applicant has not rebutted this evidence other than asserting that the transferees include his sisters and stepbrothers, who should not inherit from their deceased father's estate.
38. The other issue is whether this court should confirm the inhibition order issued on 23/4/2026. The applicant has sought to stop the sub-division and transfer of parcels comprised in West Pokot/Keringet 'A'/2539.
39. Section 68(1) of the [Land Registration Act](#) empowers the court to make an order inhibiting, for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease, or charge.
40. In Dorcas Muthoni & 2 Others -vs- Michael Ileri Ngari [2016] eKLR as cited in Daniel Gitau Kuria -vs- Muthoni Mbugua Ndumo & 3 others [2021] eKLR, the court held that an order of inhibition issued under Section 68 of the [Land Registration Act](#) is similar to an order of prohibitory injunction, which bars the registered owner of property under dispute, from registering any transaction over the said property, until further orders or until the suit in which the said property is a subject is disposed of.
41. The court held that any court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending the trial.
42. However, in the interest of justice and this being a family dispute, this court is inclined to confirm the inhibition order.
43. The upshot is that the application succeeds partially.
 - a. An order of status quo is hereby issued directing that all occupants on West Pokot/Keringet 'A'/2539 to remain on their specific portions, pending hearing and determination of the suit.
 - b. An order of inhibition is hereby issued restraining any dealings, registration, and transactions whatsoever over that land parcel known as West Pokot/Keringet 'A'/2539, pending the determination of the suit.
 - c. There shall be no order as to costs.
44. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 29TH DAY OF APRIL 2026.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:



Court Assistant - Dennis
Kiarie for the plaintiff/applicant
Sugut for the respondent present

