Koima alias Arusei v Korir & another (Environment and Land Case E005 of 2026) [2026] KEELC 2300 (KLR) (27 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2300 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ENVIRONMENT AND LAND CASE E005 OF 2026

MAO ODENY, J

APRIL 27, 2026

BETWEEN

JOSEPH KIPKOSGEI KOIMA ALIAS ARUSEI ..... PLAINTIFF

AND

ROBINSON KIBET KORIR ..... 1ST DEFENDANT

RACHEL JEPKEMBOI ..... 2ND DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion application dated 5th February 2026, by the Plaintiff/ Applicant seeking the following orders:

    a. Spent.

    b. Spent.

    c. That this Honourable court be pleased to grant an order of temporary injunction restraining the defendant/respondent herein either by himself, his agents, employees and/or servants from further trespassing, entering, occupying, fencing, interfering, constructing and erecting any structures planting crops on or dealing in any way with the plaintiff/applicant's parcel of land known as plot No. 201 (currently known as Plot No. 1108) at BANITA SETTLEMENT SHEME in Nakuru pending the hearing and determination of the main suit.

    d. That a copy of the order extracted hereof be served upon the Officer Commanding Station (OCS), Rongai Police Station for effective compliance.

    e. That costs of this application be provided for.

f. That this honourable court be pleased to grant any such further and/or alternative relief as it may deem fit.

2. The application is grounded on the supporting affidavit of Joseph Kipkosgei Koima, the Applicant, who deponed that he was the lawful allotee and occupant of Plot No. 201 (currently known as Plot No. 1108), in BANITA SETTLEMENT SCHEME.

3. The Applicant deponed that he was issued with a letter of offer for the suit property by the Ministry of Lands and Settlement and has been cultivating grass and sisal suckers as his source of livelihood. It was his disposition that the Respondents invaded his land, destroyed the perimeter fence, uprooted the grass and sisal crops and were in the process of constructing a permanent house on the suit property.

4. According to the Applicant, the Respondents had previously litigated over the same land in Nakuru ELC No. E192 of 2023, which suit was dismissed on 12th November, 2024, for non-attendance, and unless the court restrains the Respondents, they will complete the construction of the house, entrench their illegal occupation rendering the substratum of the suit nugatory.

5. The Applicant urged the court to allow the application to preserve the subject matter with costs.

6. The Respondents further filed a joint replying affidavit by Robinson Kibet Korir and Rachael Jepkemboi, and deponed that they are the lawful allotees and long-term occupants of land parcel No. 621 which was changed to parcel No. 1107. This was by virtue of the fact that the same was allocated to Fanuel Ochola who fulfilled the terms of the allotment by paying the amount in the allotment letter.

7. It was their averment that they purchased the suit land vide an agreement dated 15th October 2022, and Nicholas Kipkosgei Koima, a son of the Plaintiff/Applicant who was taking care of the land agreed to vacate the land and signed the document before the Chief.

8. They stated that they have never occupied plot No. 201, which is the subject of this suit and urged the court to find that they are wrongly sued. Further, that they completed the construction of their house and the status quo is that we are in occupation and the status presented by the Applicant vide the attached photos does not reflect the true position. They urged the court to dismiss the application with costs.

9. In support of the Respondents' case, Magdaline Adhiambo Ochola, filed a replying affidavit sworn on 29th February 2026, where she deponed that she is the wife of the late Fanuel Ochola Omollo, who was the owner of parcel No. 621, which was later changed to 1107 Banita Settlement Scheme.

10. It was her disposition that after the demise of her late husband, the family agreed to sell the suit land to the Defendant/Respondents who took possession and transfers were noted in the register. She further stated that the respondents are the owners of the suit parcel of land.

11. David Kipkorir Kigen also swore an affidavit on 20th February 2026, and deponed that he is a member of Banita Settlement Scheme, and that the Late Fanual Ocola sold the land to the Respondents who are in occupation of the same. He also stated that the Applicant Joseph Kipkosgei Koima has neither owned nor occupied the suit land.

Applicant's Submissions

12. Counsel for the Applicant filed submissions dated 26th February 2026, and identified three issues for determination as follows:

    a. Whether the Applicant has demonstrated a prima facie case against the Respondents.

    b. Whether the Applicant will suffer any irreparable injury in the event the injunctive relief sought is not granted.

    c. Where does the balance of convenience lie?

13. On the first issue, counsel relied on the case of Giella V Cassman Brown (1973) EA 358 and submitted that the Applicant has demonstrated a prima facie case as he has been in occupation of the suit parcel since 1997, and was issued with an offer letter dated 18th December 2002 by the Ministry of Lands and Settlement. It was counsel's further submission that the Applicant has utilized the suit land currently known as plot No. 1108, where he has been cultivating Boma Rhodes grass and sisal and that the defendants' actions have caused the Applicant loss, which cannot be compensated by way of damages.

14. Ms. Chepkemoi, further submitted that the Respondents had previously filed Nakuru ELC No. 192 of 2023, over the same suit property, which case was dismissed. Counsel also stated that the Respondents commenced illegal construction of a permanent house thus interfering with the Applicant's proprietary rights, and further, the Respondents' claim that they bought the suit property from one Fanuel Ochola Omollo (deceased) is totally untrue.

15. On the second issue, counsel relied on the case of Pius Kipchirchir Kogo V Frank Kimeli Tenai (2018) eKLR, and submitted that the Applicant stood to suffer irreparable harm through his unlawful dispossession and violation of his constitutional rights unless the court intervenes. Counsel stated that the Respondents have never been in occupation of the suit property prior to 2026, should the injunctive relief fail to issue, the Respondents will entrench their illegal occupation rendering the substratum of the suit nugatory.

16. Counsel urged the court to allow the application as prayed as the Applicant has met the conditions for the grant of an injunction.

Respondents' Submissions

17. Counsel for the Respondent filed submissions dated 5th March 2026, and elaborated on the background of the dispute as captured in the affidavits and submitted that the Respondents have never been in occupation of parcel No. 201 and urged the court to order that status quo be maintained pending the hearing and determination of this suit.

Analysis And Determination

18. The issue for determination, is whether the Appellant has met the threshold for grant of temporary injunction pending hearing and determination of the suit.

19. The law on grant of interlocutory injunctions is set out under Order 40 Rule 1 (a)and (b) of the Civil Procedure Rules as follows:

    " 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 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 ffit until the disposal of the suit or until further orders."

20. Similarly, for the court to grant an order of a temporary injunction, the Applicant must satisfy the three conditions stipulated in the case of Giella V Cassman Brown & Co Ltd 1973 EA 358, namely, a prima facie case with a probability of success, irreparable harm that cannot be compensated by way of damages, and if the court is in doubt, on a balance of convenience. If the Applicant meets the requirements, the court will grant an order of temporary injunction to preserve the substratum of the case pending the hearing and determination of the case.

21. In the instant suit, it is not in dispute that the Applicant claims ownership of the suit parcel plot no. 201(currently 1108) at Banita Settlement Scheme, which he claims that the Respondents have since interfered with. The Applicant claims to be the rightful owner of the suit parcel by virtue of an offer letter dated 18th December, 2002 from the Ministry of Lands and Settlement.

22. It is the Respondents' claim that they are the legal owners having purchased the same from the beneficiary of the estate of one Fanuel Omollo (deceased) who was allocated parcel of land No 621 which was changed to Plot No. 1107 Banita Settlement Scheme. The Respondents also claim that they have been wrongfully sued as they do not occupy plot No 201 as averred by the Applicant.

23. In the case of Nguruman Limited V Jan Bonde Nielsen & 2 Others [2014] eKLR, the Court of Appeal stated as follows:

> "...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration."

24. This is a case where both parties are claiming ownership and occupation of the suit land with photographs to boot. The Respondents have filed replying affidavits to explain the genesis of their purchase and occupation. The Applicant has also explained his ownership claim and admitted that the Respondents are currently in occupation and have constructed permanent buildings on the suit land.

25. In the case of Mombasa Misc. Civil Application (JR) No.26 of 2010 Republic –vs- The Chairperson Business Premises Rent Tribunal at Mombasa (Bench Mochache) Exparte Baobab Beach Resort

(Mombasa Limited) & Monica Clara Schriel, Muriithi J, observed as follows on the distinction between status quo and an order of injunction as follows:

> " In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint."

26. An order of status quo to be maintained is an ancillary relief for the preservation of the substratum of the case as it is pending the hearing and determination of the suit. This is a relief that is granted to preserve the situation so that it does not change the character of the subject matter pending the hearing and determination of the suit.

27. The Black's Law Dictionary, ButterWorth's 9th Edition, defines status quo as a Latin word which means 'the situation as it exists'. In the case of Republic – Versus - National Environment Tribunal, Ex - Parte Palm Homes Limited & Another [2013] eKLR, the court stated as follows:

> " When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario..."

28. Similarly, in the case of Kenya Airline Pilots Association (KALPA) – Versus – Co - Operative Bank of Kenya Limited & another [2020] eKLR, the purpose of a status quo order was explained as follows:

> " ... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision."

29. The order that is appropriate in this case is that, the parties maintain the status quo pending the hearing and determination of this suit. Costs of the application in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF APRIL 2026.

M. A. ODENY

JUDGE