

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC LC NO. E002 OF 2026**

**PETER SAEKWO NDIWA-----**  
**PLANTIFF/ APPLICANT**

**VERSUS**

**PAUL KIDE-----**  
**DEFENDANT/RESPONDENT**

**RULING**

- 1.** The court, by an application dated **21/1/2026**, is asked to grant a temporary injunction barring and restraining the defendant, his family members, agents, servants, or any other person claiming an interest from trespassing into Land Title No. **Trans Nzoia/Chepchoina Phase 1/597**, hereinafter the suit land, pending hearing and determination of this suit.
- 2.** The grounds are contained on the face of the application and in a supporting affidavit of Peter Saekwa Ndiwa, sworn on **21/1/2026**. The applicant deposes that he is the registered owner of the suit land as per the attached title deed issued to him on **14/1/2025**, which he took possession of in

**November 2025**, as vacant land, fenced it, and ploughed it in readiness for the planting season **2026**. He has attached a copy of the title as **PSN-(1)**.

- 3.** The applicant deposes that initially the land had been allotted to Samson Lokai, who breached the offer letter necessitating its cancellation as per annexure marked **PSN-2(a)**. The applicant deposes that the first allottee has never contested the cancellation of the initial offer of the parcel, or re-allocation to him, after the land reverted to the Settlement Fund Trustees.
- 4.** The applicant deposes that he was offered a letter of offer dated **14/10/2024**, which he accepted and duly remitted the requisite payment, meeting its terms as per annexure marked **PSN-(3)**. The applicant deposes that the defendant, who has no lawful claim, has attempted to forcefully evict him from the land, and on **26/12/2025**, he visited the land with hired goons armed with machetes and other crude weapons to forcefully do so, burned his motorcycle, and seriously injured his caretaker as per the photograph attached as **PSN-(4)**.
- 5.** The applicant deposes that he made a report at Chepchoina Police Station, **OB No. 26/12/2025**. The applicant deposes that he is apprehensive of

imminent danger of loss of his property and life, hence the relief sought.

- 6.** The application is opposed by an affidavit sworn by Paul Kide on **24/2/2026**. He says that he has been in open, actual, peaceful, and uninterrupted occupation of the suit property after purchasing it in **2010** from the original allottee, who had, after allotment by a letter of offer dated **22/8/2008**, by the Settlement Fund Trustees, paid the **10%** on **1/7/2009**, issued with a receipt, and taken possession. He attached the sale agreement dated **8/3/2010**, letter of offer dated **22/8/2008**, receipt dated **1/7/2009**, photographs, and an index ground report dated **2/1/2026** as annexures marked **PK-(2), (3), (4), (5), and (6)**.
- 7.** The respondent deposes that he has been meeting his financial obligation over the suit property as per the payment receipt by the County Land Adjudication & Settlement offices, as per the receipt for **Kshs. 16,500/=** made on **5/4/2022**, attached as **PK-(7)** and **(8)**. The respondent deposes that in **January 2021**, he approached the settlement officer to clear the outstanding loan, only to be told it should be the original allottee to do so, but informed them of his demise as per a death certificate attached as **PK-(9)**.

8. The respondent says that upon verification, the settlement officer authorised the clearance of the balance on or before **30/10/2024**, and was issued with the official statement of account showing the balance annexed as **PK-(10)**, which he later cleared as per the receipt dated **24/10/2024** marked as **PK-(11)**.
9. The respondent states that he had been assured by the settlement officer that the plot remained registered in the name of the original allottee, and to the best of his knowledge, the family of the deceased did not receive any notice to remedy the breach or cancellation of the offer dated **15/5/2024**. In the absence of any evidence of service of it, through known means, the defendant denies its issuance, making the same null and void for want of the process of cancellation.
10. The respondent terms the plaintiff's purported letter of offer, payments, and the resultant issuance of the title as irregular, illegal, and unprocedural, for the suit property was not available for re-allocation under the circumstances. The respondent denied the alleged trespass.
11. On the contrary, he says that it is the plaintiff who, on **25/12/2025**, forcefully entered the land with a rowdy

individual claiming ownership and, in the process, harming him, which he reported to the police. The respondent states that the application is aimed at sanitising the illegal re-allocation to unlawfully evict him from the land he has occupied for **15** years.

- 12.** The defendant relies on written submissions dated **22/3/2026**. **Order 40 Rule (1)** of the Civil Procedure Rules allows the court where in a suit through an affidavit or otherwise, is proved that any property in dispute is in danger of being wasted, damaged, or alienated by any party to the suit or where the defendant threatens to remove or dispose of, to grant a temporary injunction to restrain such act or make any other order of stay or prevent the wasting, damage, or alienation.
- 13.** An applicant has to establish a *prima facie* case, show there will be irreparable loss or damage in the absence of such an order, and lastly, that the balance of convenience tilts in favour of granting the orders sought.
- 14.** A *prima facie* is more than an arguable and bona fide case. In **Mrao Ltd -vs- First American Bank of (K) Ltd [2003] eKLR**, it was described as establishing if, looking at the material before the court, a right has

been infringed to call for a rebuttal from the opposite side.

- 15.** An irreparable loss or damage is one incapable of being quantified in monetary terms. It must be real, apparent, imminent, substantial, and proved. In **Nguruman Limited -vs- Jan Bonde Nielsen & 2 others [2014] eKLR**, the court said that mere apprehension or fear is not enough.
- 16.** Balance of convenience refers to the applicant suffering more in the absence of the injunction than the respondent in the presence of it, and ultimately, the suit succeeding after the main hearing. See **Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai [2018] eKLR**.
- 17.** A court at the stage of determining whether to issue the order is not expected to conduct a mini-trial or make definitive findings on facts or law, but to see to it, based on the affidavits and the material tendered, on a balance of probabilities, whether a case has been made for the grant of a temporary injunction.
- 18.** In this suit, the plaintiff is the registered owner of the suit property by virtue of a title deed, which, under **Section 26** of the Land Registration Act, is to be taken by the court as *prima facie* proof of ownership in the absence of impeachment on account of fraud,

illegality, and issuance through misrepresentation or corrupt means.

**19.** On the other hand, the defendant relies on a sale agreement with the original allottee, said to be deceased. The death certificate shows he passed on **3/8/2003**, and was issued on **25/8/2003**. So, if he was dead by **3/8/2003**, it means that the letter of offer dated **22/8/2008** was issued to a dead person. Dead persons do not tell tales or sign acceptance of offers or sale agreements or make payments of loan arrears unless it is done by a legal representative.

**20.** The defendant relies on the strength of the annexures to the replying affidavit that he has protectable rights or interests on the land which as per the defence and counterclaim, have been infringed by the plaintiff to sanitize an illegal revocation, cancellation and re-allocation of the title to the suit land when he had already paid the outstanding loan by **24/10/2024**, and had received an assurance from the allocating authority of the validity of the offer.

**21.** In **Botwa Farm Co. Ltd -vs- Settlement Fund Trustees & Another [2019] eKLR**, the court held that until a charge is perfected and land transferred in the name of the allottee, he has nothing to transfer or sell to a third party.

**22.** My finding is that the plaintiff has established a *prima facie* case. Irreparable loss and damage are imminent from the annexure to the supporting affidavit. The balance of convenience tilts in granting the order of temporary injunction to last for **one (1) year**, from the date hereof.

**23.** Orders accordingly.

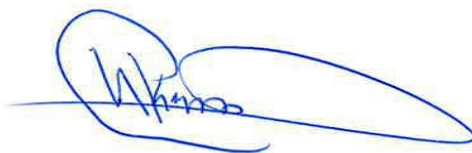
**Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 29<sup>th</sup> day of April 2026.**

**In the presence of:**

Court Assistant - Dennis

Ndiwa Serebe for the applicant present

Teti for the defendant present



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**