

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELC CASE NO. E022 OF 2025

WILLY KIPCHIRCHIR NGENO (Suing as the administrator of the estate of LUCIA CHEROTICH MUNAI (Deceased)).....
.....PLAINTIFF

VERSUS

LOICE BITENGO CHEPKWONY (Sued as the administratrix of the estate of DAVID KIMUGE CHEPKWONY (Deceased)).....1st
DEFENDANT

LAND REGISTRAR BOMET COUNTY.....2ND
DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....3RD
DEFENDANT

RULING.

Introduction.

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 7th April, 2025. The application is expressed to be brought under **Article 40** of the Constitution of Kenya, **Sections 28 & 68** of the **Land Registration Act, Order 40 Rule 1(a) & (b), Rule 2, Rule 4(1)** and **Rule 10, Order 51 Rule 1** of the **Civil**

Procedure Rules and Section 3A of the Civil Procedure Act.

2. The application seeks the following orders;

a. *Spent*

b. *Spent*

c. *Pending the hearing and determination of the substantive suit, an order of inhibition be and is hereby issued by this Court inhibiting dealing with property known as Land Reference Number Kericho/Koiyet SS/318. (sic)*

d. *Spent*

e. *The Court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents whether by themselves, their agents, employees, servants or whomsoever from entering, transferring, disposing, selling, allocating, further reallocation, remaining thereon, developing, sub-dividing, charging,*

gifting and/or in any way from interfering and/or from having any dealings whatsoever with the suit land Title No. Kericho/Koiyet SS 318 pending the hearing and determination of the suit.

f. The costs of this application be provided for.

g. The Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.

- 3.** The application is based on the grounds on its face and the Supporting Affidavit of **Willy Kipchirchir Ng'eno** that is sworn on 9th April, 2025.

Factual Background.

- 4.** The Plaintiff/Applicant commenced the present proceedings vide the Plaint dated 7th April, 2025 where he seeks the following prayers;

a. A Declaration be and is hereby made that the Plaintiff has proprietary

interest in the suit premises under the doctrine of proprietary estoppel and there is a constructive trust on the 1st Defendant in favour of the Plaintiff.

b. A Declaration be and is hereby made that the Lucia Cherotich Munai (deceased) co-owned Land Title Number Kericho/Koiyet S.S/318 with David Kamuge Chepkwony alias David Kimuge P.O. Koyet Chepkwony (Deceased).

c. A declaration be and is hereby made that 9.8 Hectares comprised in Title Number Kericho/ Koiyet S.S/ 318 forms part of the estate of Lucia Cherotich Munai (deceased) and is to be administered as such under the provisions of the Law of Succession Act (Cap 160).

d. A Permanent Injunction restraining the Defendants, their servants and/or agents from erecting and/or constructing any structures, fencing, developing, charging, leasing, transferring or in any other manner

whatsoever interfering with and/or dealing with Title No. Kericho/ Koiyet S.S/318 unless and until succession is done.

e. Any other order that this Honourable Court deems fit and necessary to grant.

f. Costs of this suit with interest thereon at Court rates.

5. The 1st Defendant/Respondent filed her Statement of Defence dated 16th September, 2025 where she denies the averments in the Plaint and urges the Court to dismiss the Plaintiff/Applicant's suit with costs.
6. As at the time of writing of this ruling, the 2nd and 3rd Defendants/Respondents have not filed their Statement of Defence.
7. The application under consideration first came up for hearing on 14th April, 2025 and the Court issued an order that the

status quo obtaining as at that date be maintained pending the hearing and determination of the application.

8. The application came up for hearing on 2nd July, 2025 when the Plaintiff/Applicant was directed to effect personal service upon the 1st Defendant/Respondent. The hearing of the application was rescheduled to 17th September, 2025.
9. On 17th September, 2025, Counsel for the 2nd and 3rd Defendants/Respondents informed the Court that they will not participating in the hearing of the application and the Court issued directions that the application be canvassed by way of written submissions. It was mentioned severally to confirm filing of submissions and on 26th January, 2026, it was reserved for ruling.

The Plaintiff/Applicant's Contention.

10. The Plaintiff/Applicant contends that he is the administrator of the estate of **Lucia Cherotich Munai** (deceased) who was his mother.

- 11.** The Plaintiff/Applicant also contends that his deceased mother was a beneficiary of the estate of **David Kimuge Chepkwony** (deceased).
- 12.** The Plaintiff/Applicant further contends that land parcel No. **Kericho/Koiyet S.S/318** formed part of the estate of **David Kimuge Chepkwony** (deceased).
- 13.** It is the Plaintiff/Applicant's contention that the 1st Defendant/Respondent is the administrator of the estate of **David Kimuge Chepkwony** alias **David Kimuge P.O Koyet Chepkwony** (Deceased).
- 14.** It is also the Plaintiff/Applicant's contention that a Certificate of Confirmation of Grant was issued dated 16th November, 2016 wherein **Lucia Cherotich Munai** (Deceased) was listed as a beneficiary of a 9.8 Ha portion of land parcel No. **Kericho/Koiyet/ SS/318**.

- 15.** It is further the Plaintiff/Applicant's contention that after the death of his mother, the 1st Defendant/Respondent filed an application for rectification of grant dated 21st February, 2024 seeking to substitute his mother's name with his (Plaintiff/Applicant) name as a beneficiary of the estate of **David Kimuge Chepkwony** alias **David Kimuge P.O Koyet Chepkwony** (Deceased).
- 16.** He also contends that he later learnt that the 1st Defendant/Respondent intended to file an application to remove his deceased mother as a beneficiary of the estate of **David Kimuge Chepkwony** alias **David Kimuge P.O Koyet Chepkwony** (Deceased).
- 17.** He further contends that he sought and obtained Letters of Administration Ad Litem with respect to the estate of his deceased mother but did not file proceedings against the 1st Defendant/Respondent because he believed that the issue would be discussed and amicably resolved within the family.

- 18.** It is his contention that he recently found out that the 1st Defendant/Respondent made an application to have his deceased mother removed as a beneficiary of the estate of **David Kimuge Chepkwony** alias **David Kimuge P.O Koyet Chepkwony** (Deceased) as outlined in the schedule of properties in the certificate of confirmation of grant.
- 19.** It is also his contention that in so doing, the 1st Defendant/Respondent is depriving him from inheriting the suit parcel of land from his deceased mother who was part of the estate of **David Kimuge Chepkwony** alias **David Kimuge P.O Koyet Chepkwony** (Deceased).
- 20.** It is further his contention that he is a beneficiary and a beneficial owner and he therefore has a legitimate interest in the suit parcel of land.
- 21.** He contends that he risks losing his share of the property without a fair hearing or proper consideration of his rights.

22. He also contends that if the distribution of the assets of **David Kimuge Chepkwony** alias **David Kimuge P.O Koyet Chepkwony** (Deceased) proceeds without their involvement, they will lose their interest in the suit parcel of land.
23. He further contends that the suit parcel of land is at a risk of being transferred, disposed of, sold or otherwise dealt with to their prejudice in total disregard to the proceedings pending before this Court.
24. It is his contention that unless this Court issues an order on injunction, their interest on the suit parcel of land will be extinguished.
25. It is also his contention that unless the Defendants/Respondents are inhibited from registering any dealings on the suit parcel of land, they are likely to transfer the property to third parties thereby rendering this suit nugatory.

- 26.** It is further his contention that it is in the interest of justice that the application under consideration be allowed as prayed.
- 27.** He contends that he has availed documents in Court which show that he has a *prima facie* case with a probability of success. He goes on to state that unless the Court issues the orders sought in the interim, the suit parcel of land is at a risk of being transferred to third parties.
- 28.** He ends his deposition by urging the Court to issue the order of injunction sought.

The 1st Defendant/Respondent's Response.

- 29.** In response to the Plaintiff/Applicant's application, the 1st Defendant/Respondent filed a Replying Affidavit sworn on 16th September, 2025.
- 30.** She deposes that the Plaintiff/Applicant has approached this Court with unclean hands and as concealed the fact that

land parcel No. Kericho/Koiyet S.S/318 was subject of succession proceedings in Kericho High Court Succession Cause No. 3 of 2015 where the estate of **David Kimuge Chepkwony** (deceased) was distributed.

- 31.** She also deposes that in the said succession cause, the Court considered and determined all the issues relating to the beneficiaries of the estate including the issue of ownership of the suit parcel of land.
- 32.** She further deposes that the Plaintiff/Applicant was not listed as a beneficiary of the estate of the deceased and neither was his deceased mother recognized as a beneficiary of the estate of **David Kimuge Chepkwony** alias **David Kimuge P.O Koyet Chepkwony** (Deceased).
- 33.** It is her deposition that the Court in the succession cause delivered a judgement on 1st October, 2021 where it expressly denied some of the claims that the

Plaintiff/Applicant is raising in the application under consideration.

34. It is also her deposition that the issues raised in the application under consideration are therefore *res judicata* as they were conclusively determined in the succession cause.
35. It is further her deposition that this Honourable Court lacks jurisdiction reopen and/or sit on appeal over orders issued by the High Court.
36. She deposes that the orders sought in the application under consideration are misplaced as the Plaintiff/Applicant does not have any interest in the suit parcel of land.
37. She ends her deposition by stating that the application under consideration is frivolous, vexatious and an abuse of the Court process.

Issues for Determination.

38. The Plaintiff/Applicant filed submissions on 24th October, 2025 while the 1st Defendant/Respondent did not file submissions.

39. The Plaintiff/Applicant submits on the following issues;

a. *Whether the issues raised in the application are res judicata and whether this Court has jurisdiction to hear and determine this suit.*

b. *Whether the Plaintiff/Applicant's application meets the threshold for grant of an injunction.*

c. *Whether the application meets the threshold for grant of orders of inhibition.*

40. On the first issue, the Plaintiff/Applicant relies on **Article 162 (2)(b)** of the Constitution of Kenya, **Section 13** of the Environment and Land Court and submits that this Court has jurisdiction to hear and determine disputes relating to title, tenure, boundaries and land use.

- 41.** The Plaintiff/Applicant reiterates the averments in his affidavit in support of the application and submits that the issues raised in the present proceedings are with regard to ownership of the suit parcel of land which this Court has jurisdiction to hear and determine.
- 42.** The Plaintiff/Applicant relies on **Section 7** of the **Civil Procedure Act**, the judicial decision of **Elijah Gachoki & another vs Stanley Mugo Kariuki & another Kerugoya HC Succession Cause No. 90 of 2013** and submits that the High Court does not have jurisdiction to determine issues that relate to ownership of land and therefore the issues raised in the present suit are not *res judicata*.
- 43.** On the second issue, the Plaintiff/Applicant relies on the judicial decisions of **Giella vs Cassman Brown [1973] EA 358, Nguruman Limited vs Jan Bonde Nielson and 2 Others CA No. 77 of 2012 [2014] eKLR** and submits that he has met the criteria for grant of an order of temporary injunction.

44. The Plaintiff/Applicant relies on the judicial decision of **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR** and reiterates that he has demonstrated that his deceased mother was a beneficiary of the estate of **David Kimuge Chepkwony** alias **David Kimuge P.O Koyet Chepkwony** (Deceased).

45. The Plaintiff/Applicant reiterates that his mother was included in the Certificate of Confirmation of Grant that was issued on 16th November, 2016.

46. The Plaintiff/Applicant also reiterates that the 1st Defendant/Respondent is irregularly attempting to remove his deceased mother from the said Certificate of Confirmation of Grant and he has therefore demonstrated a *prima facie* case.

47. The Plaintiff/Applicant relies on the judicial decision of **Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR**, reiterates the averments in his affidavit in support of the

application and submits that unless the orders sought are granted, the substratum of the suit will be irretrievably lost.

- 48.** The Plaintiff/Applicant also submits that the loss he stands to suffer cannot be adequately remedied by an award of damages.
- 49.** It is further the Plaintiff/Applicant's submissions that the balance of convenience tilts in his favour.
- 50.** It is also the Plaintiff/Applicant's submissions that the Defendants/Respondents will not suffer any prejudice if the orders sought are granted as they are meant to preserve the *status quo* pending the hearing and determination of the suit.
- 51.** On the third issue, the Plaintiff/Applicant relies on **Section 68(1)** of the Land Registration Act, the judicial decision of **M'murithi & another vs Kigia (Environment & Land Case E014 of 2022) [2023] KEELC 17760 (KLR)** as was

cited in **Terer vs Jepchirchir (Land Case E042 of 2024)** [2024] KEELC 14197 (KLR) and submits that the Court should issue an order of inhibition as he has demonstrated beneficial interest in the suit property.

- 52.** The Plaintiff/Applicant concludes his submissions by urging the Court to allow his application as prayed.

Analysis and Determination.

- 53.** After considering the Plaintiff/Applicant's application, the response thereto and the Plaintiff/Applicant's submissions, it is my view that the following issues arise for determination;

a. *Whether the application dated 7th April, 2025 is res judicata.*

b. *Whether the Plaintiff/Applicant has met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.*

c. *Whether the Court should issue an order of inhibition over land parcel No. Kericho/Koiyet S.S/318 pending the hearing and determination of the suit.*

d. Who should bear costs of the application.

A. Whether the application dated 7th April, 2025 is res judicata.

- 54.** The 1st Defendant/Respondent contends that the application under consideration is *res judicata* as the issues raised herein were determined in Kericho HC Succession Cause No. 3 of 2015.
- 55.** The 1st Defendant/Respondent also contends that the High Court made a determination on all the issues that relate to the beneficiaries of the estate including ownership of the suit parcel of land.
- 56.** The 1st Defendant/Respondent further contends that neither the Plaintiff/Applicant nor his deceased mother were recognized as the beneficiaries of the estate of **David Kimuge Chepkwony** (deceased).

57. On the other hand, the Plaintiff/Applicant submits that the High Court does not have jurisdiction to hear and determine issues of ownership of land.

58. The Plaintiff/Applicant also submits that the parties in Kericho HC Succession Cause No. 3 of 2015 and the present suit are different and the issues raised in both suits are also different.

59. Section 7 of the **Civil Procedure Act** provides as follows;

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been

subsequently raised, and has been heard and finally decided by such Court.

Explanation. — (1) The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. — (2) For the purposes of this section, the competence of a Court shall be determined irrespective of any provision as to right of appeal from the decision of that Court.

Explanation. — (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. — (4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter

directly and substantially in issue in such suit.

Explanation. — (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. — (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

**60. In Communications Commission of Kenya & 5 others -
v- Royal Media Services Limited & 5 others [2014]**

eKLR the Supreme Court, on the issue of *res judicata*, expressed itself as follows;

***“[317] The concept of res
judicata operates to prevent***

causes of action, or issues from being re-litigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings....

[319]There are conditions to the application of the doctrine of res judicata: (i) the issue in the first suit must have been decided by a competent Court; (ii) the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and (iii) the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title Karia and Another v. The Attorney General and Others, [2005] 1 EA 83, 89. (Emphasis supplied)”

61. In the judicial decision of **Christopher Kenyariri vs Salama Beach [2017] eKLR** the Court stated as follows on the ingredients to be satisfied when determining res judicata;

“...the following elements must be satisfied...in conjunctive terms;

a) The suit or issue was directly and substantially in issue in the former suit.

b) Former suit between same parties or parties under whom they or any of them claim.

c) Those parties are litigating under the same title.

d)The issue was heard and finally determined.

e)The Court was competent to try the subsequent suit in which the suit is raised.”

62. The 1st Defendant/Respondent has attached a copy of the judgement delivered in Kericho HC Succession Cause No. 3 of 2015 on 1st October, 2021 to her Replying Affidavit.

63. The parties are;

“Loice Bitengo Chepkwony vs Emmanuel Kipkorir Muge & Isaac M. Muge”

64. The parties in the present suit are;

“Willy Kipchirchir Ngeno (Suing as the administrator of the estate of Lucia Cherotich Munai (Deceased) vs Loice Bitengo Chepkowny (Sued as the administratrix of the estate of David Kimuge Chepkwony), Land Registrar Bomet County & the Attorney General”

65. Save for the 1st Defendant/Respondent who was the Petitioner in Kericho HC Succession Cause No. 3 of 2015, the parties in the present suit and the succession cause are not the same.

66. In Kericho HC Succession Cause No. 3 of 2015, **Emmanuel Kipkorir Muge** and **Isaac M. Muge** filed Summons for

Revocation of Grant dated 8th February, 2017 where they contended that the 1st Defendant/Respondent filed succession proceedings secretly and without the consent of their family.

67. The prayers sought in the application under consideration have been set out in the preceding paragraphs but I will nonetheless replicate them as hereunder;

a. That this matter be certified urgent and heard ex parte at the first instance.

b. Pending the hearing and determination of this application, an order of inhibition be and is hereby issued by this Court inhibiting dealing with property known as Land Reference Number Kericho/Koiyet SS/318.

c. Pending the hearing and determination of the substantive suit, an order of inhibition be and is hereby issued by this Court inhibiting dealing with property known as Land Reference Number Kericho/Koiyet SS/318. (sic)

d. The Court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents whether by

themselves, their agents, employees, servants or whomsoever from entering, transferring, disposing, selling, allocating, further reallocation, remaining thereon, developing, sub-dividing, charging, gifting and/or in any way from interfering and/or from having any dealings whatsoever with the suit land Title No. Kericho/Koiyet SS 318 pending the hearing and determination of this application.

e. The Court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents whether by themselves, their agents, employees, servants or whomsoever from entering, transferring, disposing, selling, allocating, further reallocation, remaining thereon, developing, sub-dividing, charging, gifting and/or in any way from interfering and/or from having any dealings whatsoever with the suit land Title No. Kericho/Koiyet SS 318 pending the hearing and determination of the suit.

f. The costs of this application be provided for.

68. In Kericho HC Succession Cause No. 3 of 2015, **Emmanuel Kipkorir Muge & Isaac Muge** sought orders of revocation

of grant while in the application under consideration, the Plaintiff/Applicant is seeking for orders of temporary injunction and inhibition.

69. It is evident that the prayers sought in the application under consideration and Kericho HC Succession Cause No. 3 of 2015 are different.

70. Therefore, I find that the application under consideration is not *res judicata*.

B. Whether the Plaintiff/Applicant has met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.

71. 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)

- 72.** 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 includes 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)

- 73.** The Plaintiff/Applicant contends that he is the administrator of the estate of **Lucia Cherotich Munai** his deceased mother.
- 74.** The Plaintiff/Applicant also contends that his deceased mother was a beneficiary of the estate of **David Kimuge Arap Chepkwony** (deceased).
- 75.** The Plaintiff/Applicant further contends that a succession cause was filed with respect to the estate of **David Kimuge Arap Chepkwony** (deceased) and the 1st Defendant/Respondent was appointed as the administrator of his estate.
- 76.** It is the Plaintiff/Applicant's contention that a Certificate of Confirmation of Grant was issued on 16th November, 2016

with respect to the estate of **David Kimuge Arap Chepkwony** (Deceased).

77. It is also the Plaintiff/Applicant's contention that his mother was included in the said Certificate of Confirmation of Grant as a beneficiary and was given a 9.8 Ha portion of land parcel No. **Kericho/Koiyet SS/318**.

78. It is also the Plaintiff/Applicant's contention that after the death of his mother, the 1st Defendant/Respondent filed an application in the said succession cause seeking to substitute his deceased mother's name with his name.

79. It is further the Plaintiff/Applicant's contention that later, the 1st Defendant/Respondent filed an application to have his deceased mother removed as a beneficiary of the estate of **David Kimuge** (deceased).

80. The Plaintiff/Applicant contends that the intended removal of his deceased mother as a beneficiary of the estate of **David**

Kimuge (deceased) will deprive him of the suit parcel of land.

81. The Plaintiff/Applicant also contends that he has a beneficial interest in the suit parcel and he has therefore established a *prima facie* case.

82. The 1st Defendant/Respondent did not address the issue whether the Plaintiff/Applicant has established a *prima facie* case.

83. It is important to note that the Plaintiff/Applicant is seeking that the Court issues orders of injunction on the basis that the 1st Defendant/Respondent has filed an application in Kericho HC Succession Cause No. 3 of 2015 seeking to remove his mother as a beneficiary of the estate of **David Kimuge Chepkwony** (deceased).

84. I note that the Plaintiff/Applicant has not availed the said application that was allegedly filed in Kericho HC Succession Cause No. 3 of 2015.

85. It is my view that if at all the Plaintiff/Applicant is apprehensive that the said application that is alleged to have been filed in Kericho HC Succession Cause No. 3 of 2015 will be prejudicial to him, then the proper forum to air his grievances would be in the said succession cause.
86. That being the case, the Plaintiff/Applicant has not established a *prima facie* case.
87. The second condition for grant of orders of temporary injunction is that the Plaintiff/Applicant must demonstrate that he will suffer irreparable injury that would not be adequately compensated by way of damages.
88. 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)

89. The judicial decision of **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR** explains 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)

90. The Plaintiff/Applicant submits that if the Court does not grant the injunctive reliefs sought, the substratum of the suit will be irretrievably lost.

- 91.** The Plaintiff/Applicant also submits that he will suffer grave prejudice if the distribution of the assets of the estate of **David Kimuge Chepkwony** (deceased) proceeds without his inclusion.
- 92.** The Plaintiff/Applicant further submits that as a result, he will suffer irreparable injury which cannot be adequately compensated by an award of damages.
- 93.** The 1st Defendant/Respondent did not submit on whether the Plaintiff/Applicant has demonstrated that he will suffer irreparable damage which cannot be adequately compensated by an award of damages.
- 94.** Taking into consideration the circumstances of this suit it is my view that the Plaintiff/Applicant has not demonstrated that he will suffer irreparable harm which cannot be adequately compensated by way of damages.

95. 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. This means that the Plaintiff/Applicant must demonstrate that the balance of convenience tilts in his favour.

96. The Plaintiff/Applicant has neither demonstrated a *prima facie* case nor demonstrated that he is like to suffer irreparable injury if the orders sought are not granted.

97. I shall therefore determine this application on the basis of balance of convenience.

98. 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]

- 99.** The Plaintiff/Applicant is essentially challenging the alleged intended removal of **Lucia Cherotich Munai** (deceased)

from the list of beneficiaries of the estate of **David Kimuge Chepkwony** (deceased).

100. By the Plaintiff/Applicant's own admission, an application seeking the removal of his deceased mother has been filed in Kericho HC Succession Cause No. 3 of 2015. I have, in the preceding paragraphs observed that any issues in respect of the intended removal ought to be raised in the said succession cause.

101. In the said circumstances, it is my view that the balance of convenience does not tilt in favour of the Plaintiff/Applicant.

102. Taking the foregoing into consideration, I find that the Plaintiff/Applicant has failed to satisfy the conditions for grant of a temporary injunction.

C. Whether the Court should issue an order of inhibition over land parcel No. Kericho/Koiyet

S.S/318 pending the hearing and determination of the suit.

103. The Plaintiff/Applicant submits that he has a beneficial interest in the suit parcel of land.

104. The Plaintiff/Applicant also submits that the 1st Defendant/Respondent is likely to transfer, sell, charge or otherwise dispose of the suit property to third parties after removing his mother from the list of beneficiaries of the estate of **David Kimuge Chepkwony** (Deceased).

105. The Plaintiff/Applicant further submits that unless the orders sought are granted, the estate of his deceased mother will be prejudiced and his claim of inheritance will be extinguished.

106. The 1st Defendant/Respondent contends that the Plaintiff/Applicant is not a beneficiary of the estate of **David Kimuge Chepkwony** (deceased) and therefore the orders

sought of inhibition and preservation of the suit parcel of land are misplaced.

107. Section 68 of the Land Registration Act provides as follows;

“(1) The Court may make an order (hereinafter referred to as an inhibition) 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.

(2) A copy of the inhibition under the seal of the Court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.

(3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.”

108. In the judicial decision of **Dorcas Muthoni & 2 others v Michael Ireru Ngari [2016] KEHC 6213 (KLR)** the Court held as follows;

“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. The 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 trial.” [Emphasis mine]

109. In the above cited judicial decision, the Court held that an order of inhibition bars the registered owner of land from registering any transactions on it until the suit where the

land is the subject matter, is disposed of. The Court also held that any party seeking for an order of inhibition must demonstrate good grounds for the said orders to be granted.

110. From the foregoing, it is evident that there is an inheritance dispute which is the basis upon which the Plaintiff/Applicant is seeking an order of inhibition.

111. As aforementioned, the Plaintiff/Applicant contends that the 1st Defendant/Respondent has filed an application in Kericho HC Succession Cause No. 3 of 2015 seeking to remove his deceased mother from the list of beneficiaries of the estate of **David Kimuge Chepkwony** (deceased).

112. The Plaintiff/Applicant also contends that if the said application is allowed, it will have the effect of denying him his beneficial interest in the property.

113. It is my view that the said issues will be best raised and/or addressed in Kericho HC Succession Cause No. 3 of 2015 where the said application is alleged to be pending.

114. Taking the foregoing into consideration, it is my view that the Plaintiff/Applicant has not demonstrated good grounds for this Court to issue an order of inhibition.

D. Who should bear costs of the application.

115. The general rule is that costs shall follow the event. This is in accordance with the Provisions of **Section 27** of the **Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

116. Taking the foregoing into consideration, I find that the Plaintiff/Applicant's application dated 7th April, 2025 lacks merit and it is hereby dismissed with costs.

117. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 23RD DAY OF APRIL, 2026.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

Mr. Ojwang for the 2nd & 3rd Respondents.

Miss Chebet for the Plaintiff/Applicant

Court Assistant; Mr. Joseph Makori.

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