Nabakhwana Co-operative Society Ltd v Lois Holdings Ltd & 2 others (Environment and Land Case E058 of 2025) [2026] KEELC 2745 (KLR) (6 May 2026) (Ruling)

Neutral citation: [2026] KEELC 2745 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT AND LAND CASE E058 OF 2025

CK NZILI, J

MAY 6, 2026

BETWEEN

NABAKHWANA CO-OPERATIVE SOCIETY LTD ..... PLAINTIFF

AND

LOIS HOLDINGS LTD ..... 1ST DEFENDANT

ISAAC MUNENE KURIA ..... 2ND DEFENDANT

FELIX MUCERU ..... 3RD DEFENDANT

RULING

1. By an application dated 28/11/2025, the court is asked to grant a temporary order of injunction barring and restraining the respondents, their agents, servants, employees, or anyone acting on their behalf from setting, transferring, allocating, or interfering with, or in any way disposing, evicting, intimidating, or demolishing any structures on L.R. No. 6485, or any part of it in any prejudice manner to the plaintiff, or intermeddling with the applicant's activities, or threatening its members with arrest or eviction.

2. The court is also asked to direct a supervised survey, beaconing, and demarcation of L.R. No. 6485 by an appointed surveyor by the court in the presence of the plaintiff. The last prayer is that the 2nd respondent render a full account of all monies unlawfully collected from the applicant's members and deposit the same in court, pending the hearing and determination of this suit.

3. The grounds are set out on the face of the application and in a supporting affidavit of Dominic Gitau and Robert Manyonge, sworn on 27/11/2025. It is deponed that the applicant was formed with the mandate to cater for its members' interests, initially squatters on land registered in the name of the 1st respondent, who is also the seller and the registered owner.

4. The applicant deposes that after prolonged court battles between the applicant and the 1st respondent over L.R. No. 5335/2, and L.R. No. 6485, all registers in the name of the 1st respondent, which, after it was settled, the parties agreed that the 1st respondent would sell to them some of its land to the members of the plaintiff.

5. The plaintiff deposes that 200 acres out of the 313 acres were sold to its members, and the 1st defendant donated 100 acres to the original members of the plaintiff in recognition of their long occupation and contribution. Pursuant to this arrangement, it is deposed that the 1st respondent allocated the plaintiff members distinct parcels of land within L.R. No. 6485, who took possession, developed, and have cultivated the portions since April 2024, with those who had occupied L.R. No.5335/2 relocating to L.R. No. 6485, yielding vacant possession of the same to the 1st respondent as agreed.

6. It is deposed that here exists a stream that divides L.R. No. 5335/2 into two parts and that during the relocation, some members in L.R. No. 5335/2 were asked to vacate the part belonging to the 1st respondent to that side sold or donated in L.R. No. 6485, which has 28 acres, which was compensated as a donation from L.R. No. 6485.

7. The applicant deposes that in April 2024, the process of vacating, subdivision, and allocation of its members took place under the superintendence of the 2nd and 3rd respondents, as authorised by the 1st respondents, relevant government authorities, to the exclusion of members of the applicant or its officials.

8. The applicant deposes that the agreed price was Kshs. 400,000/= per acre, payable in instalments to the 1st respondent, through the applicant's bank account. The applicant deposes that it was tasked to collect monies from its members and deposit it into the 1st respondent's bank account, and at no point was it agreed that the members would pay it either to the 2nd or 3rd respondents or directly to the 1st respondent, though every member who had paid 10% deposit was entitled to the land.

9. Further, the applicant deposes that at one point, the 2nd and 3rd respondent were also agents of the 1st respondent for the purposes of facilitating communication with the applicant in relation to the suit land, but, the 2nd respondent, with the knowledge of the 1st respondent and the assistance of the 3rd respondent, has unlawfully interfered with the applicant's allocation and management processes, claiming to be the legal owner.

10. It is deposed that the 2nd respondent, despite relinquishing his rights over the suit property, and in the process has, without legal authority, been visiting the land, forcefully taking its possession, reallocating portions of it to non-members, and demanding payments from its members for personal benefit.

11. The applicant deposes that the 2nd and 3rd respondents have also been using the police and the local administration to perpetuate the foregoing illegalities, demolish structures, and evict lawful allotees under the guise of enforcing illegal directives from the 1st respondent.

12. It is deposed that despite reporting those illegal activities to the 1st respondent and the relevant authorities, no corrective action has been taken, and the acts continue with impunity, including collecting monies, posing as sellers, failing to issue receipts or account for the collected monies, and misappropriating the same or threatening to evict those who sought accountability.

13. The applicant deposes that recently, it discovered documents indicating that there was an attempt to transfer L.R. No. 6485 to a son of one of the directors of the 1st respondent, despite the land having been sold, occupied, and developed by its members contrary to the earlier agreement, to which it was affirmed in Milimani HC P&A No.16 of 2018, rejecting the said transfer.

14. It is deposed that after that cause, the court established the presence of the plaintiff members on the land, allocating them L.R. No. 5335/2.

15. It is deposed that the aforesaid arrangement, however, was rejected by the 3rd party, and instead sought that the members of it vacate the land. The applicant deposes that the 2nd respondent, while aware of the earlier arrangements, is taking advantage of the situation and now purports to be the owner of the 28 acres, knowing very well the current owner of L.R. No. 5335/2 does not recognise such an arrangement.

16. It is deposed that the 2nd respondent has become a thorn in the flesh for members of the applicant; he incites violence amongst its members and reallocates the suit land to other non-members, creating further violence. It is deposed that on 18/11/2025, the 3rd party, while enforcing the High Court order required the 1st respondent to establish the correct boundaries or beaconing of the L.R. No. 5335/2, with the help of the survey, to which the 2nd respondent took advantage of the situation, came in with his own surveyors and the purported buyers of the 28 acres of suit land in dispute and started to measure the land with intention of showing beacons to the so called "buyers".

17. It is deposed that the 2nd respondent is also selling the 100 acres donated by the 1st respondent to the applicant's original members, to the members and non-members at an inflated price without the applicant's authority, to which he is directing payments to be made through his account, hence undermining its cooperative structure and depriving it and its membership of lawful rights.

18. Again, the applicant deposes that there exist two distinct societies, itself and Chesitia Farmers' Co-operative Society, with clearly defined settlement areas that are purchasing land from the 1st respondent.

19. The applicant deposes that it is a matter of public interest that it has more than 400 members who have families on the suit land, and unless the acts of impunity by the defendants are stopped, it stands to suffer loss and damage due to the interference with the division of the suit land, which is its sole duty.

20. The application is opposed through a replying affidavit sworn by Pamela Kimbui, a director of the 1st respondent, on 19/3/2026, as per a resolution attached as PKK-(1) by the co-director, who is her mother, and the lawfully registered owners of L.R. No. 6485.

21. It is deposed that the 1st respondent had filed Kitale ELC No. 77 of 2004, to which eviction orders were issued as per annexure marked PKK-(2), which, upon service, the trespassers filed an application dated 28/2/2022, seeking a stay of execution, which was dismissed on 24/5/2022 as per annexure marked PKK-(3).

22. It is deposed that the applicant had also filed Kitale ELC No. 14 of 2021 and an application dated 26/2/2021, seeking temporary orders against the eviction as per annexed ruling as PKK-(4).

23. It is deposed that to end the legal battles, an agreement was reached to sell the land to the trespassers, and the County Government of Trans Nzoia, through its CEC Environment, offered to purchase 100 acres on behalf of the trespassers.

24. Further, the 1st respondent deposes, therefore, that it is not true that there was a donation as alleged, while the trespassers were to purchase 200 acres from it at Kshs. 400,000/= per acre, which they are already occupying. It is deposed that the remaining 28 acres were not offered for sale, although some trespassers who are members of the applicant have taken possession and are tilling the land as per annexure marked PKK-(5).

25. It is deposed that the sales were to be between individual trespassers and the 1st respondent for different sizes depending on the said varied size, starting with a 10% deposit as the purchase price, the completion date being 547 days, from the date of the deposit, with a deposit being made to the applicant's account for onward transmission to the 1st respondent's Account No. 01136128259300, and that to date, only Kshs. 12,570,000/= has been paid as per annexure marked PKK-(6), despite 547 days lapsing, making the applicant not entitled to the suit land, as there are no signed sale agreements.

26. The 1st respondent deposes that it is willing to reimburse all the monies deposited into its account to the account of the plaintiff in exchange for taking full possession of the land. The 1st respondent deposes that through mediation in the succession cause, demarcation orders were issued, but the trespassers have not been cooperative in the process.

27. It is deposed that the foregoing events have raised tension in the area, resulting in the 1st respondent seeking assistance as per annexure marked PKK-(7) from the County Commissioner.

28. The 1st respondent deposes that there is no direct relationship between it and the applicant, save for the remittance of the purchaser's price to it, hence the reliefs for injunction have not been met.

29. The court notes that the applicant has filed without leave of the court a supplementary and further affidavit sworn on 10/12/2025 and 30/3/2026. It is deposed that after the application was served, they were summoned to DCI Endebess Police Station, with a view to settling the matter, to which they declined in view of a police cash bail issued on 4/12/2025, attached as NCS(10) to attend a plea on 15/12/2025 for threatening to kill the 2nd defendant.

30. It is deposed that the DCI has been threatening its members, more so those who have submitted monies to the 2nd respondent, which are acts of intimidation or interference with the administration of justice requiring the issuance of the reliefs sought.

31. In the further affidavit, it is deposed that the replying affidavit is false, misleading, since there was privity of contract and a binding transactional relax, which is confirmed by the receipt of Kshs.12,570,000/=, permitting occupation, hence the 1st respondent is estopped from denying its existence or is entitled to any equitable relief.

32. The applicant, while admitting the existence of former suits, deposes that they are not seeking to reopen relitigated issues, but only to the extent that there is interference, including disruption of the agreed payment, structure, acts of dispossession, ongoing re-allocation, and deliberate intimidation of its members and officials and misuse of the police, which conduct by the respondents undermine the already agreed framework, creates confusion and falsely portrays it as a non-complaint party; to allow the respondents to benefit from their own unlawful conduct of disrupting the payment system and then alleging default.

33. It is deposed that during the meeting held by the parties, agreement was reached on the total acreage, the acreage to be sold and donated, and a road reserve to which signatures were appended to the minutes as per annexure NCS-(1), making the introduction of 28 acres issue at this stage as an afterthought and whose occupation by Douglas Kimbui offends he order of this court made on 15/12/2025. It is deposed that the applicant and its members remain ready, willing, and able to complete the payments despite the unlawful interference, diversion of payments, and illegal re-allocation and sale to third parties.

34. The applicant relies on written submissions dated 13/12/2025. Reliance is placed on Mrao Ltd v First American Bank of (K) Ltd & Others [2003] KLR 125, Willy Kimutai Kitilit v Michael Kibet [2018] eKLR, Gitwany Investment Ltd v Tajmal Ltd & Others [2006] eKLR, Republic v Chief Magistrates

Mombasa, Exparte Ganijee & Another [2002] eKLR, Ouko & Another v Kenya Industrial Estates Ltd & Another [2025] KEHC 17191 KLR, Fatuma Abdi Jillo v Kuro Lengesen & Another [2021] KEELC 2312 [KLR], Musti Investment Ltd & Another v Kilonzo & 12 Others [2023] KEELC 18728, and Chebii Kipkoech v Barnabas Tuitoek Bargoria & Another [2019] KEELC 3435 [KLR].

35. The 1st respondent relies on written submissions dated 19/3/2026. Reliance Ngurumani Ltd v Jan Bonde Nielsen & Others [2014] eKLR, Mrao Ltd v First American Bank of (K) Ltd (supra), Jim Njuguna Muthama v Veronica Wairimu Njuguna & 2 Others [2017] eKLR, the *Law of Contract Act*, National Land Commission v Registered Trustee of the Arya Pratinidhi Sabha, Eastern Africa & Another [2019] eKLR, Kamunyu & Others v Attorney General & Others [2007] 1 EA 116, Kemusalt Packers Production Ltd v Dubai Bank of Kenya (in liquidation) & Others [2021] eKLR, and Kenya Shell Ltd v Benjamin Karuga Kibiru & Another [1986] KECA 94 [KLR].

36. Order 40 Rule 1 of the Civil Procedure Rules provides that where in any suit it is proved by an affidavit or otherwise, that any property in dispute is in danger of being wasted, damaged or alienated by a party to the suit or that the defendant intends or threatens 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, the court may grant a temporary injunction to restrain such an act or, make such an order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court may think fit until the disposal of the suit or further orders.

37. Order 40 Rule 2 of the Civil Procedure Rules provides that in any suit for restraining the defendant from continuing a breach of contract or other injury of any kind, whether compensation sought or not, the plaintiff may apply for a temporary order to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

38. The plaintiff's cause of action is captured in the plaint dated 28/11/2025.

39. In the statement of defence and counterclaim dated 19/3/2026, the 1st respondent admits that it agreed to sell a portion of its land to the trespassers of the suit property L.R. No. 6485, measuring 200 acres and that 100 acres was also to be bought by the County Government of Trans Nzoia on behalf of other trespassers on the property, by paying the purchase price and signing sale agreements.

40. The 1st respondent avers that the trespassers have been on the suit property for a long time, utilising it, and that there are eviction orders issued against them in Kitale ELC No. 77 of 2004. The 1st defendant refers to a mediation agreement in Nairobi HC P&A Cause No. 16 of 2018.

41. It is averred that the process of vacating, subdivision, and allocation of the suit land to the trespassers took place on or about April 2024, and was overseen by various government authorities, with the proper involvement of the trespassers. It is denied that the applicant is either a purchaser or in occupation of the suit land.

42. The 1st respondent admits that there was an agreement of the purchase price per acre and the modalities of payment through the applicant for onward transmission to it, including payment of a 10% deposit and the balance within 547 days, as a condition precedent of entitlement to a specific portion of the suit land that they had purchased.

43. The 1st respondent denies authorising the 2nd respondent to be its agent to collect any money on their behalf, or to undertake on their behalf any of the alleged acts by the applicant. The 1st respondent avers

that the orders given by the succession court for surveying and demarcation are being frustrated by the trespassers on the suit land, hence the recourse to the County Commissioner to intervene.

44. By way of a counterclaim, the 1st respondent avers that even though there was an intention to enter into agreements of sale of L.R. No. 6485 at Kshs. 400,000/= per acre, with the trespassers, the term has not been fulfilled, and only Kshs. 12,570,000/= has been transferred to its account, hence the trespassers are not entitled to the suit land, in the absence of any sale agreements signed in their favour.

45. The 1st respondent expresses willingness to refund the monies received so far through the plaintiff. The 1st respondent prays for vacant possession against the applicant, over L.R. No. 6485, which the applicant is occupying, and for mesne profits.

46. A party seeking a temporary injunction must meet the conditions set in Giella v Cassman Brown [1973] EA 358. A prima facie case is established whereby, looking at the material before the court, a right has been breached or violated, to call for a rebuttal from the opposite side. See Mrao Ltd (supra).

47. Irreparable loss or damage may not be quantified or compensated monetarily. It must be grave, real, apparent, imminent, demonstrable, substantial, and proof. Mere fear or apprehension is not enough. It is an injury that cannot be compensated by an award of damages. See Nguruman Ltd (supra).

48. A balance of convenience is that, if an injunction is not issued and the suit is ultimately decided in favour of the plaintiffs, the inconvenience caused to them would be greater than that caused to the defendant, if the injunction is granted and the suit is ultimately dismissed, as held in Chebii Kipkoech (supra).

49. Putting all the facts in perspective, the court has been told of the past litigations by the parties, which resulted in an intention to settle the issue by disposing of the land already occupied by the trespassers on agreed terms of Kshs. 400,000/= per acre, payable starting with a deposit of 10%, thereafter clearance of the balance in 547 days.

50. The 1st respondent, while admitting these facts, states that it has only collected Kshs.12,570,000/=, and through the applicant, and that the trespassers have already defaulted in meeting the terms and conditions of the settlement. The 1st respondent says that none of the trespassers has signed any sale agreements entitling them to enforceable rights. On the other hand, the applicant blames the respondents for frustrating the settlement. In a rejoinder, the 1st respondent refers to a mediation settlement at the High Court cause, which is now being implemented.

51. A party that comes to court and obtains ex parte orders or seeks equitable relief must make full and frank disclosure and all material facts within its knowledge. Failure to disclose could make the court vacate prior orders.

52. Astuteness is key to unlocking the discretion of the court. See Republic v Kenya National Federation of Cooperatives Ltd Ex Parte Communication Commission of Kenya [2005] 1 KLR 242.

53. In Hussein Ali & Others v Commissioner of Land Registrar & Others [2013] eKLR, the court held that an applicant has an obligation to make the fullest possible disclosure of all material facts within his knowledge. Material facts are those which are material for the judge to know, in dealing with the application as made. See Brinks-MAT Ltd v Elcombe (1988) 3 All.

54. In Uhuru Highway Development Ltd v CBK & Others, Civil Appeal No. NAI 140 of 1995, the court held that if it finds at the inter-partes hearing that there was a lack of disclosure at the ex parte stage, it should strike out the application.

55. At the interlocutory application for equitable orders, the court in John Kimeli v Barclays Bank of Kenya Ltd, Kisumu HCC No. 171 of 2003, held that a plaintiff must show a good account of himself, for the court would be reluctant to extend its hand to a person with dirty and unclean hands, for he would soil the hands of justice. The court said it will not allow a person to benefit from his own wrong, for it would amount to judicial treason.

56. Equity, as held in Willy Kimutai Kitilit v Michael Kibet [2018] eKLR KECA 573 [KLR], only protects a purchaser who has been put in possession upon sale.

57. The applicant has not disclosed how many trespassers have complied with the earlier agreement and how many are yet to do so. The applicant seems to blame the respondents, yet it has not disclosed why, after its supposed members breached the terms and conditions of occupation, the court, given the earlier eviction orders, should injunct a registered owner from enjoying its ownership rights and freedoms under Article 40 of *the Constitution*.

58. Equity aids the vigilant but not the indolent, or one guilty of laches, or coming to court in bad faith. A land sale agreement must pass the legal muster of conforming with Section 3(3) of the *Law of Contract Act* as read together with Section 38 of the *Land Act*. Violation of a contractual obligation by failing to perform one's promises, repudiating it, or interfering with another party's performance amounts to breach of contract. See Black's Law Dictionary 9th Edition, page 213, and Ramji Meghji Gudka Limited v Getembe Thrift Company Limited & 2 others (Civil Appeal 45 of 2019) [2025] KECA 22 (KLR) (17 January 2025) (Judgment).

59. Courts do not rewrite contracts between parties who are bound by the terms and conditions of the same, unless vitiated by coercion, fraud, or undue influence as held in National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd & Another [2001] KLR 112.

60. A party seeking equitable orders of injunction for breach of contract must prove the existence and terms of a sale agreement when the breach occurred, and who is to blame, as held in Ongera & Others v Mwakae Civil Appeal No. E246 of 2022 [2025] KECA 535 [KLR] (21st March 2025) (judgment).

61. The doctrine of frustration operates to excuse one party from further performance of a contract, where it appears from the nature of the contract and the surrounding circumstances that what the parties have contracted for on the basis that some fundamental thing or state of mind will not continue to exist. See Kenya Finance Co. Ltd v Kipngeno Arap Ngeny & Another [2002] KECA 306 [KLR].

62. The 1st respondent has expressed frustrations with the transaction despite bending forward and backwards to accommodate the trespassers, despite some eviction orders in place, and the mediation agreement from the Family Division of the High Court. The applicant is throwing a spanner in the works by seeking equitable orders of this court, which, as drafted, will make a mockery of previous, pending, and existing orders of this court and courts of equal status.

63. Payment of consideration and the existence of a valid sale agreement are what give parties the right to seek equitable orders under Order 40 Rule 2 of the Civil Procedure Rules for an alleged breach of a contract.

64. A prima facie case must be a genuine and arguable case showing infringement of a right. The right must be apparent, and or genuine. The applicant has not shown that it has or represents legitimate purchasers of the suit land.

65. Irreparable loss or damage or injury must be real, apparent, substantial, and demonstrable. It is where there is no other remedy open to an applicant by which to protect himself from the consequences of

the apprehended injury. If the applicant or the members have not complied with the agreement, what is there for them to lose or fear?

66. The applicant is seeking disclosure of the account by the 2nd respondent, who is said to be an agent of the 1st respondent. Evidence of who the complainants are among the members of the applicant is lacking. The deponent to the supporting affidavit has not attached a management committee's resolution authorising the filing of the suit.

67. Court orders are not made in vain. Judgment in rem, as held in Ngutari & Others v Okello & Others [2025] KECA 505 [KLR], binds all persons regardless of whether they were parties or not to any legal proceedings. The applicant was a party to the previous judgments and rulings. See National Land Commission v Registered Trustees Arya (supra). It cannot purport to seek orders to render useless the existing rights of the 1st respondent over the suit land. See Kamunyu (supra).

68. As to the balance of convenience, it is the 1st respondent who stands to suffer more in the circumstances, if an injunction is granted and the suit ultimately dismissed, since the applicant is using the suit land without paying any consideration. See Kemusalt Packers Production Ltd v Dubai Bank of Kenya (supra).

69. The upshot is that the application dated 28/11/2025 is dismissed with costs. Any interim orders are hereby vacated.

70. Orders accordingly.

RULING DATED, SIGNED, AND **DELIVERED** VIA **MICROSOFT TEAMS/OPEN COURT** AT **KITALE** ON THIS **6TH** DAY OF **MAY 2026.**

In the presence of:

Court Assistant - Dennis

SC Jan Mohamed for the 1st defendant present

Miss Wekesa for the plaintiff/applicant present

2nd and 3rd defendants absent

HON. C.K. NZILI

JUDGE, ELC KITALE.