



County Government of Trans-Nzoia v Ekidor & 4 others (Environment and Land Case E027 of 2025) [2025] KEELC 5496 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5496 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E027 OF 2025**

CK NZILI, J

JULY 23, 2025

BETWEEN

COUNTY GOVERNMENT OF TRANS-NZOIA PLAINTIFF

AND

JAPHETH LOTUKOI EKIDOR 1ST DEFENDANT

PHILIP OKOTH OKUNDI 2ND DEFENDANT

JOYCE MOKEIRA 3RD DEFENDANT

SARAH KAATHO 4TH DEFENDANT

CHIEF LAND REGISTRAR 5TH DEFENDANT

RULING

1. A party seeking a temporary order of injunction has to demonstrate having a *prima facie* case with a probability of success at the hearing, show that it will suffer irreparable loss or damage in the absence of an injunction and lastly, that the balance of convenience tilts in favour of granting an injunction. See *Giella v Cassman Brown & Co. Ltd* [1973] EA 358.
2. A *prima facie* case arises where, by looking at the material presented to the court, a right has been infringed to call for an explanation from the opposite party. In *Mrao Ltd v First American Bank of (K) Ltd* [2003] KLR,135, the court held that a prima facie case is more than an arguable case and therefore, other than raising an issue, evidence must be tendered to show an infringement of a right and probability of success of the applicant's case upon trial.
3. In *Nguruman Ltd v Jan Bonde Nielsen & Others* [2014] eKLR, the court said that the burden of proving a *prima facie* case lies with providing a clear and unmistakable right to be protected, which is directly threatened by an act sought to be restrained. The court said that the invasion of the right must



be material and substantive, calling for an urgent necessity to prevent the irreparable damage that may result from the invasion. An applicant must prove the same on a preponderance of probabilities.

4. Irreparable damage means that which is substantial and could never be adequately remedied or atoned for by damages. It is an injury that cannot possibly be repaired. A party must demonstrate that it is a harm that cannot be quantified in monetary terms or which cannot be cured. See *Halsbury's Law of England* 3rd Edition Volume 21 paragraph 739, page 352.
5. Balance of convenience refers to the inconvenience which the applicant will suffer if the injunction is not granted and the suit is ultimately decided in his favour, being greater as compared to the defendant if the injunction is granted and the suit ultimately dismissed. In *Chebii Kipkoech v Barnabas Tuitoek Bargarua & another* [2019] eKLR, the court observed that the burden is upon the applicant 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.
6. A court in deciding whether to grant an injunction is not expected to make any conclusive or definitive findings of the law or fact, but to see to it that, based on the material before it that there is an arguable case to be proved at the trial. A party applying must show that there is no other remedy open to him by which to protect himself from the consequences of the apprehended injury. See *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR.
7. In *Amir Suleiman v Amboseli Ltd* [2004] eKLR, the court observed that courts should always opt for the lower, rather than the higher risk of injustice.
8. Having set the guiding principles, has the application dated 1/7/2025 met the above criteria in a logical, distinct and sequential manner? See *Nguruman Ltd v Jan Bonde Nielsen (supra)*. What the applicant has sought is a temporary injunction to restrain the 1st – 4th respondents from entering, claiming, trespassing into and or interfering with the applicant's quiet possession of all the parcels of land described as Kitale Municipality Block 6/236, 237, 238, 165, 164, 162, and 161. The reasons are contained on the face of the application and in two affidavits sworn by Truphosa Amere, on 1/7/2025 and 5/7/2025.
9. It is deponed that the applicant in mid-June 2023, initiated a construction project of its new headquarters on part of land described as Kitale Municipality Block 6, which is a 10 acre piece of land, following planning and budgeting for and tender to centralize county services and offices including the governor's and county executive offices in a 6 storey building, estimated to cost Kshs.500,000,000/=, as per attached contract marked TA-1.
10. The applicant deposes that for the last two and half years during the construction, the site has experienced tranquility and optimum peace until mid-June 2025, when scores of unidentified goons have irregularly ambushed, attacked and injured its workers claiming to be acting from instructions by the respondents, who covertly lay claim to part of land excised from Kitale Municipality Block 6, more specifically Kitale Municipality Block 6/238, 165, 164, 162, and 161, yet Kitale Municipality Block 6 is public land as per Article 162 of the Constitution, earmarked by the Government of Kenya for Agriculture Mechanization, a devolved function.
11. Wholly aware that the same is public land, the applicant deposes that the Commissioner of Lands vide letter dated 29/4/2004 cancelled all allocations of land regarding Kitale Agricultural Mechanization Station LR No. 6700, which essentially is Kitale Municipality Block 6; hence, the respondents have no valid claim on the same as per the letter attached as TA-2. The applicant deposes that the respondents, fully aware that they have no legitimate claim, have devised unlawful and disruptive strategies to retain a portion of the suit property by staging rowdy youths to obstruct the construction of a perimeter wall



- around the suit property, which are acts of lawlessness, so as to interfere, intimidate, scare away and eventually stop the construction works and ultimately prevent the county government from relocating into the new complex as planned.
12. The applicant deposes that the procedure to acquire the parcels by the respondents was flouted, for they did not follow the seven steps set out in the Government Land Act (repealed) and Section 115 of the retired Constitution; hence, they know that their claim is outrightly unlawful, null and void ab initio, including lacking an application for subdivision, approval for the same, PDP drawn or approved, gazettelement thereof, cadastral survey maps drawn, beacon certificates issued and therefore, the acquisition was fraudulent.
 13. The applicant deposes that the physical whereabouts of the respondents are unknown; they have never stayed on the suit property and therefore, there is need to serve the court processes by way of substituted service. The applicant deposes that it is urgent that interim orders of injunction issue, otherwise, the people of Trans Nzoia stand to suffer unimaginable loss if the project stalls or is sabotaged by the respondents' fraudulent acts; otherwise, public interest tilts in favour of issuing the orders to protect public property from deliberate land grabbing by private individuals. The applicant deposes that if the injunction is not granted, the respondents are likely to infringe on its right to ownership and possession of the suit property and the loss of its investment to the tune of Kshs.500,000,000/=.
 14. In the further affidavit, the applicant attached a copy of an OB No. 12/12/5/2025, as annexure TA-1. It is deposed that the record at the lands registry in regard to the properties is in shambles and contains very scanty details and on two occasions it wrote to the land registrar seeking for certified copies of documents but have not been availed as per attached letters dated 25/4/2025 and 26/6/2025, marked as annexure TA-2, save for cancelled letter of allotment, certificate of leases and certificate of official searches marked TA-3, 4 and 5, respectively.
 15. The applicant deposes that the development project is at an advanced stage and almost reaching its logical conclusion, save for the remaining portion being impeded by the respondents, who are using goons as per attached images and project status report dated 6/6/2025, marked TA-6 and 7.
 16. The primary pleading by the plaintiff is the plaint dated 1/7/2025. It seeks inter alia:
 - (a) That the leases issued to the 1st - 4th defendants for Kitale Municipality Block 6/238, 165, 164, 162, and 161 were fraudulent and were made ultra vires by the Chief Land Registrar, the 5th defendant.
 - (b) Declaration that the suit properties are public properties within the meaning of Article 62 of the Constitution and belong to the plaintiff by virtue of 4th Schedule, Part 11, para. 1 of the Constitution.
 - (c) Permanent injunction restraining the defendants from trespassing, transferring, leasing, wasting and or dealing with the suit parcels of land.
 - (d) Chief Land Registrar to rectify the Register by cancelling the lease and certificate of leases issued in favour of the 1st - 4th defendants and consequently transfer the same to the plaintiff.
 - (e) General and exemplary damages.
 17. The basis of the claim for the suit property is at paragraph 4 of the plaint, where the plaintiff avers that the entire Kitale Municipality Block 6 is public land which had been earmarked for Agricultural Mechanization, currently a devolved function, hence, the parcels are under its exclusive possession and



control. In paragraph 13 thereof, it is averred that the defendants are covertly laying claim to the parcels that were excised from Kitale Municipality Block 6.

18. It is trite law that he who avers must prove. The basis of the plaintiff's claim is that the suit property is public land that was reserved for Kenya Agricultural Mechanization. The date when the reservation or the earmarking was made is not pleaded or specified. Documentary evidence that there was such earmarking or reservation or alienation as public land under the law has not been attached to the replying and the supplementary affidavits. Annexure marked TA-2 is a letter dated 26/6/2025, to the Land Administration, Ministry of Lands, Housing and Physical Planning. The letter states that the County Government set up its new county headquarters on part of LR No. 6700, on the understanding that the same is public land. The applicant sought to be told about:
 - (a) Initial use and purpose of the land.
 - (b) Current status of the land under caption.
19. The letter attaches some part development plans submitted by the respondents and allotment letters. TA-5 are official search certificates for Kitale Municipality Block 6/162, 164, and 165, showing that certificate leases were issued to the respondents dated 15/3/1996. Indefeasibility of title is the basis for land registration. A register of titles at a registry is deemed to accurately reflect the current facts about a title. The person whose name is recorded on the register holds a guaranteed title to the property. See [David Peterson Kiengo & 2 others v Kariuki Thuo](#) [2012] eKLR.
20. Whoever desires a court to give judgment as to any legal right or liability depends on the existence of facts which he asserts must prove that those facts exist. What the applicant is asserting is that the suit properties, which the respondents hold titles were public land, irregularly, fraudulently and unprocedurally alienated to them. There is no evidence that before the applicant embarked on the entry into, occupation, use and development of the county headquarters, undertook due diligence and verified the current status of the suit properties, to rule out any adverse claims. Equally, there is no evidence that the applicant initiated any process to recover, reclaim and or demand for the surrender of the certificates of leases held by the respondents, in mid-June 2023 when it undertook to commence the construction process.
21. The applicant has pleaded that the respondents are land grabbers and this court should, in the public interest, protect the immense public resources expended in the project to the tune of Kshs. 500,000,000/=. It is trite that a title deed may be impugned if it is proved that it was obtained illegally and unprocedurally. See [Elijah Makeri Nyagwa v Stephen Mungai Njuguna & Another](#) [2013] eKLR. Section 26 of the [Land Registration Act](#) provides that a certificate of title issued is *prima facie* proof that the person named therein is the owner. See [Dr. Joseph Arap Ngok v Justice Moiijo Ole Keiwua & Others](#), Nairobi Civil Appeal No. 60 of 1997.
22. It is the applicant who wants to have the court protect its occupation, use and the developments on the suit parcels of land against the respondents who hold valid title documents issued by the 5th respondent, which are yet to be cancelled, recalled or invalidated on the exceptions set out under Section 26 of the [Land Registration Act](#). The basis is that the mother title was public land. It is only after prove that the respondents can be said to fall under Article 40(6) of the [Constitution](#). Prima facie evidence that the land initially belonged to Agricultural Mechanization Services before 2013 was a department under the Ministry of Agriculture at Kilimo House.
23. There is no document from the Agricultural Development that Kitale Municipality Block 6 used to be their parcel of land before the county government came in, after the 2010 [Constitution](#), that the applicant can say that the suit parcels of land are some of the assets that were transferred to it by



the transitional authority. It is the applicant who is alleging infringement of a right. In *Dr. Simon Waiharo Chege v Paramount Bank of Kenya*, Milimani HCCC No. 368 of 2001, the court held that an injunction will issue in appropriate cases, to protect the legal and equitable rights of a party to litigation, which have been or are being or are likely to be violated by the adversary. The court observed that if there is doubt as to the existence of such a case, it would decide the application on a balance of convenience.

24. The applicant has not stated the nexus between the alleged goons and the respondents. None of the goons has been arrested or implicated the respondents. Evidence of any material damage to the perimeter fence is not before the court. Speculation, apprehension or fear is not enough. The danger, loss or injury must be apparent, true, actual and imminent. See *Siteyia v Gitome & Others* [2015] eKLR, *Kevin K. Mwiti & Others v Kenya School of Law & Others* [2015] eKLR. In *Martin Nyaga Wambora v Speaker of the County Assembly of Embu & Others* [2014] eKLR, the court held that an alleged threatened violation that is remote and unlikely will not attract the court's attention.
25. The affidavits in support of the application are sworn by a county secretary and not a person who is working at the site. The source of the information regarding the goons or youths, their number, modus operandi and their relationship with the respondents has not been laid. Whether the applicant has used its enforcement officers and the police department to round up the youths or goons to apprehend them is not indicated.
26. Looking at the totality of the material placed before the court at this juncture, I find that the three hurdles of a prima facie case, irreparable loss or damage and the balance of convenience have not been met. The application is dismissed with costs. The applicant may serve the summons by substituted service.
27. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 23RD DAY OF JULY 2025.

In the presence of:

Court Assistant - Dennis.

Musimbi for the plaintiff present.

HON. C.K. NZILI

JUDGE, ELC KITALE.

