



**Opande v Chebet (Environment and Land Case E020 of 2025)  
[2025] KEELC 5503 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5503 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E020 OF 2025**

**CK NZILI, J**

**JULY 23, 2025**

**BETWEEN**

**TERESA KWAMBOKA OPADE ..... PLAINTIFF**

**AND**

**KANDA CHEBET ..... DEFENDANT**

**RULING**

1. A party seeking interim orders of injunction has to meet the tests or ingredients set out in Order 40 of the [Civil Procedure Rules](#), *Giella - v- Cassman Brown & Co. Ltd* [1973] EA 358, *Mrao Ltd - v- First American Bank* [2003] eKLR and *Nguruman Ltd - v- Jan Bonde Nielsen & Others* [2014] eKLR.
2. A *prima facie* case is one where, looking at the material placed before a tribunal, a right has been infringed to call for an explanation from the opposite side. The material must disclose an arguable case with a probability of success at the hearing. A party need not produce a title to the land, but must demonstrate sufficient interest.
3. Irreparable loss or injury is where damages recoverable in law may not be an adequate remedy. Speculative, injury, fear, or apprehension is not enough. The injury, loss, or damage must be apparent, imminent and demonstrated. See Order 40 Rules 2(1) and 4 of the [Civil Procedure Rules](#).
4. Balance of convenience refers to what the plaintiff will suffer in the absence of an injunction as compared to what the defendant will suffer, if ultimately the case is decided in favour of the plaintiff and if it is granted and the suit is ultimately dismissed. See [Chebii Kipkoach - v- Barnabas Tuitok Bargoria & Another](#) [2019] eKLR.
5. Where a doubt exists as to the applicant's right or if the right is not disputed, but the violation is denied, the court in determining whether or not to grant an injunction, takes into consideration the balance of convenience to the parties, the nature of injury to be suffered by the respondent if an injunction is



granted and the plaintiff turn out to be right and vice versa. In other words, the court looks at who will suffer the greater harm with the outcome of the suit or motion.

6. The applicant has to surmount the three hurdles sequentially, logically, and distinctly; otherwise, there is no leapfrogging. See *Kenya Commercial Finance Co. Ltd - v- Afraba Education Society* [2001] Vol 1 EA 86. In doing so, the court does not conduct a mini-trial. All that is required is to see to it that there is a clear and unmistakable right that has been infringed by an act of the respondent. The invasion of the right has to be material, substantive and require urgent necessity, to prevent the irreparable damage that may result from the invasion.
7. Applying the foregoing case law to the instant case, the applicant says that he is the registered owner of L.R No. 4380/9, measuring 30 acres, which has now been invaded by the respondent to the extent of 3 acres without justification. He says that the respondent has erected some structures therein. The applicant has attached copies of the title deed, sale agreement, confirmed grant of letters of administration and transferred title to her name, as seen in annexures marked TK0-01-05, respectively.
8. The plaint dated 6/5/2025 seeks declaratory orders that the defendant is a trespasser, eviction orders, a permanent injunction and general damages for trespass. Learned counsel for the applicant orally submitted on 11/6/2025 that the applicant has met the ingredients of a temporary injunction.
9. Trespass, according to counsel, occurred on 14/11/2018. The delay in applying for an injunction is said to be lack of legal fees. Learned counsel submitted that the land is agricultural in nature; hence, his client has been denied use of the suit land. The respondent, after service of the summons, entered an appearance on 26/5/2025. Trespass is captured in the surveyor's report dated 13/6/2023. Trespass is an unjustified entry into the land of another. The rights of the applicant under Order 40 of the Civil Procedure Rules, Section 63(e) of the Civil Procedure Act and Article 40 of the Constitution need to be protected.
10. I find that the applicant has made out a *prima facie case* with a probability of success. There is a likelihood of irreparable loss and damage in the absence of an injunction. The balance of convenience tilts in favour of upholding the right of the registered owner in the absence of other exceptional circumstances demonstrated by the respondent. The orders sought shall last for one (1) year.
11. Orders accordingly.

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

**In the presence of:**

Court Assistant - Dennis

Oloo for the defendants present

Ngeywa for the plaintiff present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

