



**Chepkwony v Kitur & 3 others (Land Case E003 of 2024)  
[2024] KEELC 4906 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4906 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
LAND CASE E003 OF 2024  
E ASATI, J  
JUNE 20, 2024**

**BETWEEN**

**RAEL CHEPKORIR CHEPKWONY ..... PLAINTIFF**

**AND**

**PHILIP KIBET KITUR ..... 1<sup>ST</sup> DEFENDANT**

**PETER CHEPKEMOI KIBET ..... 2<sup>ND</sup> DEFENDANT**

**FREDRICK KIBET ..... 3<sup>RD</sup> DEFENDANT**

**COUNTY LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 16/2/2024 brought by the plaintiff pursuant to the provisions of articles 40 and 159 of *the Constitution* of Kenya 2010, Orders 40 and 51 Civil procedure Rules and section 3A *Civil Procedure Act* Cap 21 Laws of Kenya. The application seeks for:
  - a. An order of injunction restraining the Respondents whether by themselves, their agents and/ or servants from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the plaintiff's property being title No. Kisumu/Koru/1075 pending the hearing and determination of the suit.
  - b. The Officer Commanding Koru Police station do enforce compliance of the orders above.
  - c. Costs of the application be provided for.
2. The application was opposed vide the Replying Affidavit sworn by the 2<sup>nd</sup> Respondent on behalf of the other Respondents on 29<sup>th</sup> February 2024 and the Further Affidavit by the same deponent.



3. The substantive prayer sought is an order of temporary injunction restraining the Respondents from interfering with the suit land pending hearing of the suit. Order 40 pursuant to which the application was brought provides that:-

- “ 1) where in a suit it is proved by affidavit or otherwise-
- a. That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to a suit or wrongly sold in execution of a decree; or
  - b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in a suit, the court by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders”

4. Further, as held in the case of *Giella vs Cassman Brown Co. Ltd* (1973) 358 the principles for grant of interlocutory injunction are that the Applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience. A prima facie case was defined by the Court of Appeal in *Mrao Ltd vs First American Bank Kenya Ltd & 2 Others* [2003] eKLR as follows:

“ a prima facie case in a civil Application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

5. The applicant’s case is that she is the registered owner of the suit land measuring 19.88Ha or thereabouts. That the Respondents have interfered with the suit land by illegally trespassing, building on and sub-dividing the same for registration. That by the illegal acts of the Respondents the applicant is deprived of her rights to property which is contrary to *the Constitution* of Kenya 2010. That unless the Respondents are restrained, they will continue to interfere, subdivide the land and erect permanent structures on the land and thereby cause the applicant irreparable damage and lead to a breach of the peace.

6. The Respondents contend that the suit is brought in bad faith as the plaintiff and the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are related. That the suit land is family land which they don’t understand how it was registered in the name of the plaintiff as it belonged and was registered in the name of Joseph Chepkwony Koske alias Kipsongol Arap Yamto, deceased. That the plaintiff holds the suit land in trust for the other family members. That the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are the children and grandchildren of the deceased while the plaintiff is one of the widows of the deceased.

7. The application was argued by way of written submission. I have taken into account the written submissions dated 11<sup>th</sup> May 2024 filed on behalf of the applicant by Onyango Jonyo & Company



Advocates and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' submissions filed by Onyari Nyameino & Company Advocates.

8. I have considered the application, the contents of the Supporting Affidavit, Replying Affidavit and Further Affidavit and the annexures thereto. The suit land is registered in the name of the plaintiff. The plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are related. The Defendants claim that they belong to one family; a claim that has not been disputed by the Plaintiff. The Defendants claim that the plaintiff holds the suit land in trust for herself, the Defendants and the other members of the family. In the circumstances, an order of temporary injunction in favour of the plaintiff as prayed in the application is not appropriate. However, it is in the interest of justice that the status quo of the suit land be maintained and the suit land be preserved pending hearing and determination of the suit wherein the rights and interests of the parties in the suit land will be determined,
9. For the foregoing reasons this court hereby orders that the status quo of the suit land prevailing as at the date hereof be maintained pending hearing and determination of the suit. For avoidance of doubt, no subdivision, beaconing, sale, transfer, disposal, charging or any other mode of alienation is to be registered or undertaken in respect of the suit land by any party herein pending hearing and determination of the suit.

Orders accordingly.

**RULING READ AND SIGNED AT KISUMU AND DELIVERED THIS 20<sup>TH</sup> JUNE, 2024  
VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

**In the presence of:**

Maureen: Court Assistant.

No appearance for the Plaintiff/Applicant.

No appearance for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents.

No appearance for the 4th Defendant/Respondent.

