



**Koech (Represented by the personal representative namely Luka Kirui) v Siror & 4 others  
(Environment & Land Case E033 of 2024) [2025] KEELC 628 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 628 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE E033 OF 2024  
CK NZILI, J  
FEBRUARY 18, 2025**

**BETWEEN**

**ESTATE F JACKSON KOECH (REPRESENTED BY THE PERSONAL REPRESENTATIVE NAMED LUKA KIRUI) ..... PLAINTIFF**

**AND**

**MICHAEL BETT SIROR ..... 1<sup>ST</sup> RESPONDENT  
BETHAM INVESTMENT CO LTD ..... 2<sup>ND</sup> RESPONDENT  
CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT  
DIRECTOR OF SURVEYS ..... 4<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This Ruling relates to two applications dated 6/9/2024 and 9/12/2024. In the 1<sup>st</sup> application dated 6/9/2024, the plaintiff/applicant seeks for:
  - (1) Preservation of parcel No. 6614/51-67 by ordering the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents not to dispose of, charge, or in any way interfere with the said titles.
  - (2) Maintenance of the prevailing status quo on the ground so far as the occupation of LR. No. 6614/6 is concerned and, in particular, to stop the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents from interfering with the plaintiff/applicant's possession of 178.406 acres regarding the sub-division scheme of LR No. 6614/6 into 22 portions LR No. 6614/20-41 pending hearing of this suit.
  - (3) The 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents be enjoined from subdividing the land on the ground in terms of the subdivision scheme of 17 parcels, that is to say, No. 6614/51-67, pending hearing and determination of the suit.



- (4) OCS Cherangani Police Station to ensure the orders issued are obeyed.
2. The application is supported by the grounds on the face of the application and further grounds in the supporting affidavit of Luka Kirui dated 6/9/2024. The applicant avers that he holds a copy of Limited Grant Ad Litem issued on 21/3/2024 attached as annexure LK'1'. It is deposed that by a statement of Samuel Chebii annexed as LK'2' together with the 1<sup>st</sup> defendant/respondent, jointly raised money to purchase LR No. 6614/6, commonly known as Tunen Farm, and invited his late father as a third partner, as per a memorandum dated 5/11/1970 annexed as LK'3'.
  3. The applicant avers that a consent was issued by the Trans Nzoia Land Control Board on 7/12/1977, to transfer the land from the 1<sup>st</sup> defendant to himself and 13 others, showing the individual entitlements of each of them. The applicant avers that the 1<sup>st</sup> defendant/respondent unsuccessfully challenged the consent both at the Rift Valley Provincial Lands Control Appeal Board and through a Judicial Review Application in NRB HC Misc. Civil Cause No. 28 of 1978, as per annexures marked LK'6', '7', and '8'.
  4. Again, the applicant avers that a consent was sought to subdivide the land after the number of those who had contributed towards the land; 24 portions were generated as per a letter of consent dated 10/12/1981, with an indication that Plot Nos 3 and 24 belonged to the 1<sup>st</sup> defendant, while Plot Nos. 3 and 5 belonging to the deceased would be amalgamated, and LR No. 6614/6 would be subdivided into 22 parcels as per an annexure marked LK'11' showing the beneficiaries.
  5. The applicant avers that the central authority under the Department of Lands approved the subdivision plan, as per the annexed copy of a letter dated 8/9/1982, addressed to the 1<sup>st</sup> defendant and his partners, forwarding the revised scheme plan, to facilitate the survey of the farm.
  6. Similarly, the applicant avers that the 22 beneficiaries of the subdivision scheme instructed Olweny & Associates Licensed Surveyors to undertake the work, which they did and prepared 22 deed plans for the said parcels as per a letter dated 26/6/1987, confirming completion, but also requesting the Director of Surveys not to release the deed plans until his fees are cleared.
  7. The applicant avers that the subdivision survey was vide F/R No. 175/23 undertaken and new numbers issued as LR No. 6614/20-41, only now awaiting issuance of title deeds. The applicant avers that, while the 1<sup>st</sup> defendant/respondent was aware of the foregoing, he secretly instructed M/S Opiyo & Associates Surveyors to subdivide LR No. 6614/6 into 17 parcels, who unfortunately never did the work, only for the deceased to discover in 2020, that 17 deed plans were prepared and presented to the 4<sup>th</sup> defendant/respondent, who approved a subdivision plan, vide F/R No. 411/27, giving out new parcels of land as LR No. 6614/51-67 and deed plan No. 391023-391040, followed by title issuance of title deeds, as per annexures marked LK '13', '14', '15', and '16'.
  8. The applicant avers that the 1<sup>st</sup> defendant/respondent transferred LR. No. 6614/51 to the 2<sup>nd</sup> defendant, whose directors are his sons and daughters, measuring 173.13Ha, yet as the subdivision scheme, he was only entitled to 178.41 Ha, the extra 149.22, being for the other beneficiaries. The applicant avers that his late father's share was 178.41, unlike in the subdivision by the 1<sup>st</sup> defendant shown as 28.88Ha, which is a reduction of 101.076 acres.
  9. Further, the applicant deposes that after the fees owed M/S Olweny & Associates were cleared, M/s Prime Line Survey, licensed surveyors took over the subdivision of the scheme following the death of Mr. Olweny, who wrote to the 4<sup>th</sup> defendant confirming payment of the fees, and demanding the release of the deed plans as per a letter dated 15/6/2020 annexed as LK'17'.



10. The applicant deposes that the 4<sup>th</sup> defendant, by a letter dated 26/8/2020, annexed as LK'18', addressed to M/S Opiyo & Associates, pointing out that the subdivision into 17 parcels had superseded the earlier survey, which was still subsisting, calling him upon to provide a remedy to the problem.
11. Moreso, the applicant avers that by a letter dated 7/9/2020, attached as LK'19' Mr. Opiyo wrote to the 4<sup>th</sup> defendant contending that his job was unprocedural and requested for its cancellation, including the deed plans. The applicant avers that by a letter dated 4/9/2020, attached as LK'20', the 4<sup>th</sup> defendant informed Mr. Opiyo that all the records reflecting the subdivision had been canceled, including Comps No. 67273, Survey Plan No. 411/27, and deed plan Nos. 391023-391040, reverting the same to its original status as per F/R No. 175/23.
12. The applicant deposes that upon cancellation of the subdivision scheme into 17 parcels, the Director of Land Administration within the Department of Lands prepared 22 leases in terms of Survey Plan No. 175/23, in the names of the 1<sup>st</sup> defendant, who was to execute the leases, obtain the 22 certificates of leases, and then transfer the 21 other leases to the beneficiaries. The applicant deposes that his late father and others were summoned to the office of the Deputy County Commissioner(DCC) and were informed the leases had been forwarded to his office for execution by the 1<sup>st</sup> defendant/respondent, who unfortunately declined to sign them, as per the annexed samples, forwarding letter and deed plan and maps marked as LK 21, 22, 23, 24 and 25 respectively. The applicant deposes that his late father passed on 17/9/2021.
13. The applicant further states that in 2024, he became aware of a letter dated 10/5/2022 written by the Director of Land Administration to the 1<sup>st</sup> defendant/respondent, returning to him the deed plans for the subdivision scheme of LR No. 6614/20-41 for cancellation out of a complaint letter dated 1/5/2022 by the 1<sup>st</sup> defendant's advocates, claiming that he did not know the subdivision, as per annexure LR'26'. Further, the applicant deposes that he also became aware of the letter dated 18/1/2024 by the 4<sup>th</sup> defendant, informing M/S Patrick Opiyo Surveyors that his survey work had been reinstated, which letters dated 1/5/2022 and 18/1/2024 were not copied to any of the other beneficiaries.
14. Equally, the applicant avers that he is challenging the legality of the reinstatement of the subdivision scheme of LR No. 6641/51-67 and urging the court to declare the subdivision scheme of LR No. 6614/6 into 22 parcels of land as valid. While awaiting the determination, the applicant urges the court to preserve the said parcels of land, whose titles of LR No. 6614/51-67, are in the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondent, from any sale, charge, or interference while awaiting the hearing and determination of the main suit.
15. The applicant deposes that LR No. 6614/6 on the ground is occupied as per the subdivision plan into 22 parcels and that that status quo should be maintained, with the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondent being stopped from introducing any land surveyor on the ground to establish boundaries as per the challenged subdivision scheme of 17 parcels of land. The applicant deposes that on 2/9/2024, the DCC Cherangani, at the instance of the 1<sup>st</sup> and 2<sup>nd</sup> defendant, visited the farm and told the occupants that a surveyor would come to the land on 9/9/2024 to establish the new boundaries, in terms of the subdivision scheme into 17 parcels. The applicant avers that the estate would stand to lose over 100 acres if the new boundaries are established, hence suffering irreparable damages while defeating the purpose of the suit. The applicant deposes that the situation on the ground was volatile, and it was in the best interest of justice to contain the situation.
16. The application is opposed by the 2<sup>nd</sup> defendant/respondent's director, Joyce Chumba, through a replying affidavit sworn on 20/9/2024. It is deposed that the applicant/plaintiff has failed to produce



- any sale agreement or partnership deed between him, the 1<sup>st</sup> defendant/respondent, and Mr. Samuel Chebii. The 2<sup>nd</sup> defendant/respondent deposes that title deeds for LR No. 6614/51-67 exist separately and have been released to the rightful equitable owners or beneficiaries as per annexures JC1-10 and JC11-13, respectively. The 2<sup>nd</sup> defendant/respondent deposes that LR No. 6614/6 was purchased by the 1<sup>st</sup> defendant alone as per a land sale agreement signed on 11/6/1970, after the land was publicly advertised in May 1969 and suitable potential purchasers interviewed between June - August 1969, to get funding from the A.F.C.
17. The 2<sup>nd</sup> defendant/respondent deposes that in May 1969, he solely paid a deposit of Kshs.42,250/=, to cater for legal fees, stamp duty, and 25% deposits of the purchase price derived from A.F.C., Standard Chartered Bank, sale of livestock and land in Eldama Ravine. The 2<sup>nd</sup> defendant/respondent deposes that a charge was executed in favor of A.F.C. and a transfer made from Estates and Investment [1961] Ltd as per the transfer instrument attached as JD-14. Further, the 2<sup>nd</sup> defendant deposes that there was no loan repayment burden in 1970 since the loan from A.F.C. was disbursed in 1972 as per letters annexed as JC15-17; otherwise, the 1<sup>st</sup> defendant did not invite any third parties to assist in the loan repayment, least of all the late Jackson Koech.
  18. Again, the 2<sup>nd</sup> defendant/respondent terms the LCB consent, the survey and subdivision of LR No. 6614/6 of 22 parcels of land by M/S Olweny & Associates Licenced Land Surveyors as unprocedural, illegal, unlawful, null and void since the 1<sup>st</sup> defendant/respondent did not consent, approve or surrender the mother title.
  19. The 2<sup>nd</sup> defendant deposes that the only subdivision exercise undertaken, approved, or sanctioned by the 1<sup>st</sup> defendant/respondent was for the creation of 17 parcels out of LR No. 6614/6 in 2016; otherwise, the parallel one by the 1<sup>st</sup> defendant was an illegality. The 2<sup>nd</sup> defendant/respondent further deposes that it is not open for M/S P. Opiyo & Associates Licenced Land Surveyor to decide which process was legal, procedural, or not, or give way forward, for the said licensed land surveyor had no capacity or authority to seek cancellation of a survey exercise already concluded and title deeds issued as a consequence.
  20. The 2<sup>nd</sup> defendant/respondent deposes that the surveyors and the survey office were indulging in a futile exercise purporting to recognize the work of M/S Olweny & Associates by trying to reverse or cancel what had been legally, procedurally, and regularly undertaken by the 1<sup>st</sup> defendant/respondent sanctioned work by M/S Opiyo & Associates. The 2<sup>nd</sup> defendant/respondent deposes that the 1<sup>st</sup> defendant solely proved LR No. 6614/51 before it was transferred to the 2<sup>nd</sup> defendant/respondent; otherwise, nobody has been deprived of any land on account of subdivision of LR No. 6614/6 and the subsequent transfer of LR No. 6614/51, least of all the plaintiff/applicant who has no claim to agitate on the suit properties.
  21. The 2<sup>nd</sup> defendant/respondent deposes that the 3<sup>rd</sup> and 4<sup>th</sup> defendants/respondents seemed to be abetting an illegal process and that the LCB has no mandate to determine who contributed what towards the purchase by him of LR No. 6614/6 or listen to any appeal for the lawful consent that he had obtained to subdivide the land into 17 parcels. The 2<sup>nd</sup> defendant/respondent deposed that the purported LCB to subdivide his land into 22 parcels was irregular, illegal, unprocedural, and a nullity ab initio; otherwise, the one he obtained for the subdivision of 22 parcels of land was open and transparent.
  22. Further, the 2<sup>nd</sup> defendant/respondent deposes that the Deputy County Commissioner (DCC) has no role to play in matters relating to the endorsement of leases; the annexed sample leases are inconsequential and an outcome of an illegal exercise as a result of survey works not sanctioned or



- approved by him. The 2<sup>nd</sup> defendant/respondent termed the suit by the applicant/plaintiff as based on an illegal exercise seeking to be sanctioned as legal, for the plaintiff has not produced any sale agreement or partnership deed, to base his claim on.
23. Again, the 2<sup>nd</sup> defendant deposes that the 1<sup>st</sup> defendant/respondent had no intention of sending a land surveyor on the ground to establish boundaries for parcel LR Nos. 6614/51-67, because the boundaries are discernable on the ground; otherwise the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondent are not aware of the alleged communication to that effect by the DCC Cherangany. The 2<sup>nd</sup> defendant/respondent deposes that the survey was a general exercise; the situation on the ground is exceptionally calm; otherwise, the plaintiff was imagining the volatility.
  24. Accordingly, the 2<sup>nd</sup> defendant/respondent deposes that the letter dated 24/1/1987 appears to have been an agreement signed between Tunen Farmers and the surveyor, but the instructions remain illegal for the 1<sup>st</sup> defendant did not give them. The 2<sup>nd</sup> defendant/respondent attached copies of a certificate of incorporation board resolution, copies of the certificate of title to LR No. 6614/6, and the surrender of the certificate of title as annexures JC-18, 19, 20-37, respectively.
  25. The 3<sup>rd</sup> - 5<sup>th</sup> defendants/respondents oppose the application by replying affidavit of David Nyandoro and Wilfred Muchae sworn on 29/11/2024. The Chief Land Registrar avers that according to the office records, LR No. 6614/6, Title LR No. 23908 Kitale was a resultant of a subdivision from LR No. 66/14, first registered in the name of the 1<sup>st</sup> defendant/respondent as IR 2468/15 on 8/9/1971 as per annexures NDN'1' and '2', measuring 289.7 Ha or 716 acres, as per Survey Plan No. 87947, situated in South East Kitale Municipality now Trans Nzoia County.
  26. The deponent avers that on 8/7/1971, the property was charged with the Agriculture Finance Corporation at Kshs.108,750/=, which charge was registered as IR 23908/2 and discharged on 4/12/2015 as per the charge and discharge attached as NDN'3' and '4'. The deponent avers that on 16/2/2016, the property was subdivided into 17 portions, namely LR No. 6614/51 - 67, whereby certificates of titles were issued under Section 70 of the Repealed Registration of Titles Act to the 1<sup>st</sup> defendant/respondent on presentation of deed plans from the 4<sup>th</sup> defendant/respondent as entries Nos. 5 to 21 of the land register. The deponent avers that LR Nos. 6614/51 has since been transferred to the 2<sup>nd</sup> defendant/respondent, a family company whose directors are Michael Bett and Joyce Chepkoech Chumba.
  27. The 4<sup>th</sup> defendant/respondent, on his part, confirms the history of LR No. 6614/6 and its measurement. Further, it is deponed that the records held and maintained at the Cadastral Survey Records office, LR No. 6614/6 was a resultant subdivision out of LR No. 6614/2, measuring 7647 acres that gave rise to 13 subdivisions, namely LR No. 6614/3- LR. No. 6614/15 as contained in Cadastral Plan F/R No. 115/34 Survey Computation (Comps) Number 13773, done on 31/10/1969 by M/S I.F. Cuthill - Licensed Land Surveyor, which, upon submission on 2/12/1969, the survey records were examined, approved and authenticated by the 4<sup>th</sup> defendant on 28/2/1970, after which a deed plan No. 87947 dated 7/7/1970 was issued in support of registration of title to parcel LR No. 6614/6.
  28. The 4<sup>th</sup> defendant avers that on 2/1/1983, LR. No. 6614/6 was subdivided into 22 subdivisions, namely LR No. 6614/20-41, as contained in Cadastral Plan Number F/R 175/23. It was averred that the 4<sup>th</sup> defendant was requested by M/S J.E.W. Olweny - Licensed Land Surveyor through letter Ref. No. OA/TUNEN/14 dated 26/6/1987, not to release deed plans in respect of LR No. 6614/20 - LR No. 6614/40 to the beneficial owners, namely Tunen Farmers, who were yet to pay survey fees totaling Kshs.21,079.80, inclusive of official examination fees of Kshs.2,095, letter attached as annexure WM'1'.



29. Regarding LR No. 6614/51-67, the 4<sup>th</sup> defendant/respondent avers that on 13/5/2015, it received a submission of survey records in respect of LR No. 6614/6 from M/s P. Opiyo Licensed Land Surveyor by a letter dated 28/10/2014 annexed as WM'2', based on an annexed and approved subdivision scheme plan comprising 17 subdivision parcels giving rise to new subdivision parcel LR Nos. 6614/51- LR No. 6614/67, as contained in Cadastral Plan Number F/R No. 411/27, Survey Comps. No. 67273, which superseded the previous survey allotted above for LR Nos. 6614/20-41.
30. The 4<sup>th</sup> defendant/respondent avers that the said Cadastral Survey of the subdivision into LR No.6614/51-67 was examined, approved, and authenticated on 3/7/2015 and a notice of approval and authentication issued to M/S O. Opiyo - Licensed Land Surveyor, which was filed and recorded as per annexed Director of Survey's letter as MW'3'. The 4<sup>th</sup> defendant/respondent avers that following the approval and authentication by the Director of Surveys and the payment of the statutory examination fee, the submissions of the seventeen sets of deed plans for examination, approval, and authentication, through a letter dated 14/9/2015, deed plan numbers 391024 - 391040, all dated 11/11/2015 were issued to the Director of Surveys in support of the registration of titles to LR No. 6614/51 - LR No. 6614/67, as per the aforesaid letters attached as WM'4' and '5'.
31. Similarly, the 4<sup>th</sup> defendant/respondent deposes that on 15/6/2020, a request was made to it by M/S J.A. Odhiambo - Licensed Land Surveyor, through a letter dated 15/6/2020 requesting the director to release the earlier deed plans, which M/s Olweny has directed that they shall not be released after the outstanding professional and official examination fees were cleared. Annexed was the letter marked WM'6'.
32. More so, the 4<sup>th</sup> defendant/respondent deposed that by a letter dated 22/9/2020, M/S J.A. Odhiambo, Licensed Land Surveyor, remitted the outstanding statutory examination fees and submitted 22 sets of deed plans for examination, approval, and authentication, following which, upon authentication, they were released to him by a letter dated 22/9/2020 attached as WM'7'. The 4<sup>th</sup> defendant/respondent deposes that on 9/9/2020, he received a letter from M/S P. Opiyo, Licensed Land Surveyor, attached as WM'8' seeking the cancellation of survey record for LR No. 6614/51- 6614/67, on the basis that the same was unprocedurally obtained. The 4<sup>th</sup> defendant/respondent deposes that after considering the complaint, the Director of Surveys, through a letter dated 16/9/2020 attached as WM'9', then protested to cancel the survey records and accordingly informed the 3<sup>rd</sup> defendant/respondent of the cancellation and protested to approve the request by M/S J.A. Odhiambo - Licensed Land Surveyor, request as per annexure WM'6', to which it processed and issued deed plan numbers 445058 - 445071, for LR No. 6614/20 - 6614/41.
33. The 4<sup>th</sup> defendant/respondent deposes that a notice of the issue of Deed Plan Nos. 445058-445079 in respect of LR No. 6614/20-41 was filed and recorded as per a letter dated 26/11/2021 attached as WM'10'. The 4<sup>th</sup> defendant/respondent deposes that on 24/5/2022, it received a letter dated 10/5/2022 from the Director of Land Administration advising that M/S J.A. Odhiambo, Licensed Land Surveyor, obtained the Deed Plan Numbers, allotted above based on false representation and therefore were obtained in an unprocedural manner, after which the Director of Land Administration forwarded to the Director of Surveys the original subject Deed Plans for cancellation as per a letter annexure marked WM'11'.
34. The 4<sup>th</sup> defendant/respondent deposes that surprisingly, M/s P. Opiyo, Licensed Land Surveyor, by a letter dated 31/12/2023 attached as WM'12', wrote to the Director of Surveys insisting that all his documents or processing was forthrightly conducted and should be upheld, which was acted upon and through a letter dated 18/1/2024 attached as WM'13', by the Director of Surveys, the survey record



- contained in Cadastral Plan No. F/R No. 411/27, Survey Comps. - 67273 of LR No. 6614/51 - LR No. 6614/67 were reinstated.
35. The 4<sup>th</sup> defendant/respondent therefore enclosed as annexures marked WM'14-'18' the certified survey records and copies of supporting documents in respect of the subject matter, namely; Deed Plan No. 78510 dated 30/10/1961, Deed Plan No. 87941 dated 7/7/1970, Cadastral Plan Number F/R No. 115/34, Cadastral Plan Number F/R No. 175/23 and Cadastral Plan Number F/R No. 411/27.
  36. The applicant relies on written submissions dated 24/10/2024. It is submitted that this court, under Section 3, 3A, 63(c) of the *Civil Procedure Act*, Order 40 Rule (1) and (4) of the Civil Procedure Rules, and Section 13(7) (a) of the Environment & Land Court Act can issue a temporary injunction and preservation orders guided by the principles laid out in *Giella -vs- Cassman Brown & Another* [1973] EA 358, *Mrao Ltd -vs- First American Bank of Kenya Ltd* Civil Appeal No. 39 of 2002 and *Daniel Kipkemoi Siele -vs- Kapsasian Primary School & Others* [2016] eKLR.
  37. The applicant submitted that he has made out a case for issuance of the temporary injunction and for the preservation of the suit properties for the 1<sup>st</sup> defendant/respondent holds the titles in trust for the deceased and 21 other beneficiaries, who had contributed funds to jointly own the land for the purpose of sharing in the future going by the annexures attached to the application, which the respondents have not controverted.
  38. The applicant submits that a loss of over 100 acres would subject the estate to irreparable damage if the respondents were to perfect the survey of the 17 parcels of land on the ground during the pendency of this suit. Further, the applicant submits that the balance of convenience tilts in favour of granting the orders sought and the maintenance of the status quo.
  39. The 1<sup>st</sup> and 2<sup>nd</sup> respondents rely on written submissions dated 22/1/2025. It is submitted that the applicant has failed to meet from first test of a prima facie case since there is no demonstration that there was a joint purchase of LR No. 6614/6, approval of the subdivision of the land by M/S Olweny and Associates by the 1<sup>st</sup> defendant/respondent as the sole owner of the land, the alleged subdivisions were illegal, null and void and that the 22 leases were procedurally legally and regularly created and released to the 1<sup>st</sup> defendant/respondent.
  40. On irreparable damage, the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents submit that the applicant has failed to demonstrate the nature of the harm that he stands to suffer and how the same is irreparable in nature. On the balance of convenience, the 1<sup>st</sup> and 2<sup>nd</sup> respondents submit that the same had not been demonstrated, and in the event where there are doubts in the first and second tests, the application should fail. Reliance was placed on *Nguruman Ltd vs Jan Bonde Nielsen & others* (2014) eKLR.
  41. The 3<sup>rd</sup> - 5<sup>th</sup> defendants/respondents rely on written submissions dated 6/2/2025. It is submitted that the applicant has failed to meet the threshold for a grant of a temporary injunction as set into in *Giella -vs- Cassman Brown* [(Supra), *Mrao Ltd -vs- First American Bank of Kenya Ltd & Others* (Supra) and *Mbuthi -vs- Co-operative Bank of Kenya Ltd & Another* [2025] KEHC 716 [KLR].
  42. The 3<sup>rd</sup> - 5<sup>th</sup> defendants/respondent submit that since the suit land is registered under the name of the 1<sup>st</sup> respondent, the applicant should have produced a copy of an agreement of purchase of the land jointly with the 1<sup>st</sup> respondent or evidence detailing his ties to the suit land; otherwise none of his rights have been violated due to the subdivisions. The 3<sup>rd</sup> - 5<sup>th</sup> respondents submit that the applicant has failed to demonstrate his relationship with the suit land to justify the issuance of an injunction. On irreparable damage, it was submitted that the applicant cannot purport to say that he stands to lose 100 acres, which is privately owned and does not belong to him in the 1<sup>st</sup> instance, to be capable of suffering any injury.



43. A party seeking temporary and or preservative orders of injunction has to establish a prima face case with a probability of success at the hearing, demonstrate that he will suffer irreparable loss or damage in the absence of an injunction order, and lastly; show that a balance of convenience tilts in favor of granting the order of injunction. The power of a court in an application for an interlocutory injunction is a judicial discretion exercised on the basis of the law and the evidence before the court.
44. A party, therefore, must tender evidence that he has a right which apparently has been infringed on by the opposite party to call for an explanation or rebuttal from the latter as per *Mrao Ltd -vs- First American Bank of Kenya Ltd & Others* (Supra). In establishing whether a right exists or not, the court is not called upon to make definitive conclusions of either fact or law. In *Mrao Ltd* (Supra), the court observed that a prima facie case includes but is not limited to a genuine and arguable case; it is not sufficient to raise issues, the evidence must show an infringement of a right and the probability of success of the applicant's case at the trial.
45. In *Nguruman Ltd vs. Jan Bonde Nielsen & Others* (Supra), the court observed that the party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected, which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive. There must be an urgent necessity to prevent the irreparable damage that may result from the invasion of the rights.
46. In doing so, the court observed that it does not require a minitrial or a close examination of the merits of the case. Further, the court observed that the applicant need not establish title, so long as he can show that he has a fair and bonafide question to raise as to the existence of the right which he alleges. The court said that the standard of proof of the prima facie case is on a balance of probabilities.
47. Concerning irreparable damage, the court said it means that what the party will suffer in the absence of an injunction, is not recoverable by way of damages or is not quantifiable; or has no adequate remedy; or damages recoverable in law will not be an adequate remedy.
48. In *Naftali Ruthi Kinyua -vs.- Patrick Thuita Gachure & Another* [2015] eKLR, the court said that to succeed in injunctive relief, the applicant must show that he owns the suit property or that he has a valid claim capable of defeating any third party's claim in respect of the same property. The court said that it was incumbent upon the parties to produce such documents as would support their claim in respect of the suit property to the exclusion of the other. On irreparable loss, the applicant has to show that the harm threatened cannot be corrected through monetary compensation or the conditions that cannot be put back to the way they were. Speculative injury will not do. There must be more than an unfounded fear or apprehension on the part of the applicant. There must be an imminent grave and irreparable injury which is actual, substantial, and demonstrable.
49. In *Elijah K. Arap Bii -vs.- K.C.B. Ltd* [2001] eKLR, the court said that the applicant knew all along that the property he had offered as security was a commodity for sale in the event of a loan repayment default. Order 40 Rule (1) and (2) Civil Procedure Rules provide that a party must prove through an affidavit or other ways that the property is in danger of being wasted, sold, damaged, or alienated. Section 13(a) ELC Act mandates this court to grant an interim preservation order. Irreparable injury, as held in *Pius K. Kogo -vs.- Frank Kimeli Tenai* [2018] eKLR is established if there is no other remedy open to the applicant by which he will protect himself from the consequences of the apprehended injury.
50. As to the balance of convenience, the court needs to be satisfied that the inconvenience likely to be caused to the applicant by not granting the injunction is greater than what is likely to be caused to the respondent. So, the court has to balance the inconveniences of both parties and possible injuries



to them and their properties as held in Charter House Investment Ltd -vs.- Simon K. Sang & Others [2010] eKLR. Further, in doing all the above, the whole point of a temporary injunction, as held in American Cynamid Co. -vs.- Ethicon Ltd (1975) AL 396, is to keep matters in status quo until the central issue in the case can correctly be heard.

51. Applying the foregoing case law and principles to the instant case, has the applicant surmounted the three hurdles sequentially and logically? The primary pleading by the plaintiff is the plaint dated 6/9/2024. In paragraph 45, past litigation over LR No. 6614/6, has been mentioned involving the deceased. No pleadings, judgments, rulings and letters have been attached for the court to establish the outcomes in those past proceedings. The primary prayer by the applicant is for a declaration that the 1<sup>st</sup> defendant/respondent holds LR No. 6614/6 in trust for the plaintiff/applicant and the other 21 persons who alleged contributed to its acquisition and whom the 1<sup>st</sup> defendant/respondent put into possession and who have been in occupation of the land to date.
52. The applicant seeks to preserve the suit parcels of land, for he is in occupation on the ground. Further, the applicant has attached annexures marked LK'1' - LK'25 to show that he has a proper or valid claim to the land, worthy protection by way of preservatory orders, which rights or interests have been acknowledged or known to the respondents.
53. The 1<sup>st</sup> defendant/respondent has not sworn an affidavit to refute the contents of the supporting affidavit by the applicant, yet they directly touch or relate to his conduct or relationship with the late Jackson Koech before he passed on on 17/9/2021.
54. In the replying affidavit of Joyce Chumba, she does not swear the same for or on behalf of the 1<sup>st</sup> respondent. Equally, the replying affidavits of the 3<sup>rd</sup> - 5<sup>th</sup> respondents have not refuted the facts that the applicant has discernable, beneficial interests or rights to the subject land, to which the 1<sup>st</sup> respondent allowed and or acquiesced to the occupation and possession by the deceased up to his demise and thereafter to the filing of this claim. For those reasons, I find that the applicant has established a prima facie case.
55. The second issue is whether the applicant has demonstrated that he will suffer irreparable damage incapable of compensation if the status of the land is not preserved by way of temporary orders of injunction or the maintenance of the status quo. In Total(K) Ltd -vs.- KRA [2013] eKLR, the court ordered for the maintenance of the status quo under its inherent power as a measure of interim protection to preserve the subject matter, as a court of justice, and to protect a party from suffering an injustice. The status quo is, therefore about the present situation, the way things stand as at the time the order is made, the existing state of things as held in Shimmers Plaza Ltd -vs- NBK Ltd [2015] eKLR. In Mugal -vs.- Kanga (1988) eKLR 748, the court cited Gazette Notice No. 5178/2014 Practice No. 28(K), which grants this court the power to make an order of status quo to be maintained until the determination of the case. Status quo must be interpreted with respect to the existing factual scenario as held in TSS Spinning & Weaving Co. Ltd -vs- NIC Bank Ltd & Another [2020] eKLR. It seeks to prevent the substratum of the dispute before the court from being eroded or changed radically to prevent one party to the dispute from being prejudiced. See Kenya Airline Pilots Association -vs.- Co-operative Bank of )K) Ltd & Another [2020] eKLR.
56. In this application, other than stating that there is occupation on the land, the applicant has not stated the nature of his occupation and the developments thereon, which are likely to be affected, should the land surveyors visit the ground to effect the changes. Equally, on the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have not denied the said occupation or possession of the claimed portion by the applicant. Further, the 3<sup>rd</sup> - 5<sup>th</sup> respondents while acknowledging current registration and issuance of the title deeds, Cadastral Survey Map, and Deed Plans for the resultant 17 parcels of land, have not confirmed



or denied that the subject land is occupied by the 22 beneficiaries, including the applicant whom they had hitherto issued, parcel numbers, deed plans and caused survey works to be undertaken before the cancellation, reversals, and reinstatement to the current status.

57. Therefore, the status of the registration of the 17 parcels of land and the issuance of the resultant title deeds to the 1<sup>st</sup> and 2<sup>nd</sup> respondents is admitted by all the parties to the suit. From the rival documents relied upon by the parties, it is apparent that there are serious conflicts of facts as to whether the 1<sup>st</sup> respondent holds the initial title to the land in trust for the applicant. In *Ougo -vs.- Otieno & Another* [1987] eKLR, the court in such a scenario held that the best option is to maintain the status quo until the dispute is decided at the trial so that a change in the substratum of the dispute does not prejudices either party.
58. The balance of convenience, in my view, therefore tilts in issuing the order of maintenance of status quo as per prayer No. (3) pending hearing and determination of the suit.
59. In this regarding the application dated 9/12/2024, the same is allowed as prayed. Parties to file and exchange pleadings and to come for case conference on 20/3/2025.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18<sup>TH</sup> DAY OF FEBRUARY 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Chemutai

Kiarie for Applicant present

Momanyi for 1<sup>st</sup> and 2<sup>nd</sup> defendants present

No appearance for the 3<sup>rd</sup> - 5<sup>th</sup> defendants

