



**Sang & 4 others v Singoei & 2 others (Environment and Land Appeal E009 of 2024) [2024] KEELC 13550 (KLR) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13550 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL E009 OF 2024  
EO OBAGA, J  
NOVEMBER 18, 2024**

**BETWEEN**

**WILLIAM K. SANG ..... 1<sup>ST</sup> APPLICANT  
WILLIAM KIPRUTO ARUSEI ..... 2<sup>ND</sup> APPLICANT  
BENJAMIN BARTIOL CHUMO ..... 3<sup>RD</sup> APPLICANT  
CHERUIYOT KOIMA ..... 4<sup>TH</sup> APPLICANT  
WILLIAM CHEBII ..... 5<sup>TH</sup> APPLICANT**

**AND**

**JULIUS CHARLES K. SINGOEI ..... 1<sup>ST</sup> RESPONDENT  
THE COUNTY LAND REGISTRAR UASIN GISHU COUNTY .... 2<sup>ND</sup>  
RESPONDENT  
THE COUNTY SURVEYOR UASIN GISHU COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 6<sup>th</sup> March, 2024 the Appellants/ Applicants sought the following orders: -
  - a. Spent.
  - b. Spent.
  - c. That temporary orders of Injunction do issue to restraint the defendants jointly and severally either by themselves, servants and/or agents from trespassing upon, wasting, damaging, alienating, re-surveying, drawing a new list of members, adding any new members, encumbering and/or otherwise dealing in any manner whatsoever with land parcel LR No. 6447 Siliboi “a” Olare Burnt Forest pending the hearing and determination of this suit.



- d. Spent
  - e. That costs be provided for.
2. The application is based on the 6 grounds thereof and the Supporting Affidavit sworn by the 1<sup>st</sup> Applicant/ Appellant on even date, on his own behalf and on behalf of the co-applicants. He gave a brief background on the ownership of the Siliboi Farm; the farm was subsequently split into 2 groups “Siliboi A 6447 Block 13 and Siliboi 6662 Block 10”. Each group separately did their management under separate administration.
  3. That Mr. Kiplalang alias Morio was appointed as the chairman of LR No. 6447 Siliboi “A”. He prepared the final area list of survey together with the government surveyor and thereafter submitted the list, an RIM Sheet No. 104/3/1 Survey Plan F/R91/1.
  4. He further stated that after the area list was presented; an objection window was given but none of the members raised any objection. Subsequently, after the lapse of the objection window, members settled on their respective portions.
  5. He contends that after some time, the 1<sup>st</sup> defendant allegedly created his own list and added himself as an additional member as number 36 on the list with 2 Acres. That the 1<sup>st</sup> defendant is now trying to resurvey the entire farm with the list that he created.
  6. He thus argues that the grant of the orders sought is necessary to stop the defendants jointly and severally from resurveying the farm, since the same would lead to people being moved, inconvenienced or even destruction of property in the event of any slight adjustment.
  7. That the 1<sup>st</sup> defendant is working in collision with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to conduct an illegal resurvey with the intention to overturn a similar survey conducted 2 decades ago. He thus urged the court to allow the application and grant the orders sought.
  8. The application was opposed. The 1<sup>st</sup> Respondent filed a Replying Affidavit dated 4<sup>th</sup> June, 2024; where he dismissed the application as being misconceived and made in bad faith, the same application having been filed in Chief Magistrate's court in *ELC case No. E165 of 2022*. He maintained that he is a resident in the suit farm No. 6447.
  9. He confirmed the original ownership of the suit land and the total acreage of 798 Acres, which was later named Siliboi Farm Limited and divided into two; LR No. 6662 and LR No. 6447. He further stated that there were 35 members on LR No. 6447.
  10. It was his contention that the land was subdivided by the Government surveyor between 1991-1992 based on the contribution of each member to the purchase price; LR NO 6662 was subdivided successfully. However, when subdivision was set to be done on the other portion LR 6447, a new list was prepared by the 1<sup>st</sup> Applicant, who purported to act as the secretary of the suit land Siliboi No. 6447, despite the fact that only the Directors of Siliboi Farm Limited were in charge of the subdivision process.
  11. It was further his assertion that the subdivision of the suit land was delayed by the 1<sup>st</sup> applicant as a result of some inconsistencies on the purchase price and as a result, the survey map for Siliboi LR NO, 6447 was contested as it was marred with illegalities.
  12. It is his claim that following the presidential directive issued in the year 2015 on the lands pending subdivision; he swore an affidavit as a Director of the Siliboi Farm Limited and the same was taken to the Director of Survey. Later, on 24/3/2022; members of Siliboi LR No. 6447 had a meeting with



the agenda of subdividing the land. He outlined the various meetings that took place thereafter and which led to the 1<sup>st</sup> applicant being instructed to surrender all the documents that he was holding in respect to the suit land.

13. That a meeting was later held between the members of the 2 parcels of land on 23/7/2021 in respect of a debt owed; it was agreed that the payment of the debt owed to the members of parcel No. 6662 would be done by way of donation of 2 acres of land by the members of parcel No. 6447. That the two acres portion of land does not belong to him but to the members of parcel No. 6662.
14. He maintained that the applicants have been part of the survey exercise and fully aware of the process, that out of the 35 members of the of the farm, only the applicants are challenging the process.
15. In defending his actions on the survey process; he averred that he is the only surviving Director of the Siliboi Farm Limited and he therefore has the responsibility of ensuring that the original members get their rightful portions, he denied creating any new leadership documents as alleged.
16. It was his claim that all the members of the Siliboi Farm No. 6447 have all agreed that the survey be done to enable them obtain titles to their respective land parcels. He thus dismissed the application as being a delay tactic of the ongoing survey process and urged that the same be dismissed with costs.
17. The Application was canvassed by written submissions. Submissions and authorities for the applicant are dated 23<sup>rd</sup> October, 2024. However, on a perusal of the court record and the CTS platform, I do note that despite being given an opportunity to file his submissions, the respondent did not file any submissions. Be that as it may, I will proceed to render my decision as hereunder;

#### **Analysis and Disposition:**

18. I have carefully considered the application, the Affidavits together with the annexures thereto and the submissions. Consequently, it is my view that the issue arising for determination therefrom is;
  - a. Whether the Applicant has met the requirements for the grant of a temporary order of injunction sought herein.
19. The applicants have sought temporary orders of injunction pending the hearing and determination of the appeal. The law on interlocutory injunctions is provided under Order 40 (1) (2) of the *Civil Procedure Rule* which provides as follows: -
  1. “Where in any 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 the suit, or wrongfully sold in execution of a decree;
    - (b) .....,The court may 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.”
20. Section 13 (7) (a) of the *Environment and Land Court Act*, 2015 further mandates this court to grant interim preservation orders; including an interim order of injunction in the nature sought herein.
21. Before delving into the merits of the principles guiding the grant of injunctions and whether the same have been satisfied; I must state that the circumstances of the instant application pose a unique scenario.



22. The 1<sup>st</sup> respondent contended that the instant Application is similar to the application filed in the trial court and which was dismissed; a fact which was denied by the applicants. I have taken the liberty to carefully look and consider the memorandum of appeal filed herein vis-à-vis the instant application.
23. It is imperative to point out that the appeal and the grounds of appeal outlined thereunder arose from a ruling by the trial court; Hon. D. Mikoyan, whose effect was to dismiss the application for temporary injunction filed by the appellants/applicants. What then will be the effect of this application, if determined and/or even allowed, I pose to ask.
24. While this court is cognizant of the need to preserve the subject matter of appeal and ensure that the same is not rendered nugatory; it is my considered opinion that by determining the instant application on temporary injunction, the same will have the potential of disposing off the substantive appeal at an interlocutory stage without taking directions on the hearing and determination of the appeal.

**Conclusion:**

25. In view of the foregoing, I find that the Application dated 6.03.2024 is not merited and the same is hereby struck out with costs to the 1<sup>st</sup> Respondent.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**E. O. OBAGA**

**JUDGE**

Ruling delivered in the presence of: -

Mr. Kenda for Mr. Rabala for the 2<sup>nd</sup> Applicant.

Court Assistant – Laban

**18<sup>TH</sup> NOVEMBER, 2024**

