



REPUBLIC OF KENYA



**Langat v Officer & 44 others (Environment & Land Case E001 of 2022)  
[2023] KEELC 15877 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15877 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE E001 OF 2022  
MC OUNDO, J  
FEBRUARY 23, 2023**

**BETWEEN**

**DAVE KIPKORIR LANGAT ..... APPLICANT**

**AND**

**DISTRICT PHYSICAL PLANNING OFFICER ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT SURVEYOR, KERICHO COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT LANDS OFFICER, KERICHO COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**DIRECTOR OF PHYSICAL PLANNING ..... 4<sup>TH</sup> RESPONDENT**

**DIRECTOR OF SURVEY ..... 5<sup>TH</sup> RESPONDENT**

**LILY CHEPNGENO SITIENEI ..... 6<sup>TH</sup> RESPONDENT**

**JANE CHEPKOSKEI SITIENEL ..... 7<sup>TH</sup> RESPONDENT**

**DUNCAN CHERUIYOT ..... 8<sup>TH</sup> RESPONDENT**

**CAROLYNE CHEPNGETICH ..... 9<sup>TH</sup> RESPONDENT**

**CHARLES LAGAT ..... 10<sup>TH</sup> RESPONDENT**

**WINNY CHEPNGETICH ..... 11<sup>TH</sup> RESPONDENT**

**DAVID TUEI NGASURA ..... 12<sup>TH</sup> RESPONDENT**

**S.K LANGAT ..... 13<sup>TH</sup> RESPONDENT**

**JOHN KIPKORIR BOIYON ..... 14<sup>TH</sup> RESPONDENT**

**DOROTHY T. CHEPKOECH ..... 15<sup>TH</sup> RESPONDENT**

**CARREN CHERONO RONO ..... 16<sup>TH</sup> RESPONDENT**

**MARY CHEPKIRUI KORIR ..... 17<sup>TH</sup> RESPONDENT**



ZEDDY CHEPKEMOI .....	18 <sup>TH</sup> RESPONDENT
STELLA CHERONO .....	19 <sup>TH</sup> RESPONDENT
REHEMA CHEROTICH .....	20 <sup>TH</sup> RESPONDENT
SARAH CHEPKORCH .....	21 <sup>ST</sup> RESPONDENT
EUNICHEBII BUSIENEI .....	22 <sup>ND</sup> RESPONDENT
VINCENT KIPROTICH KETER .....	23 <sup>RD</sup> RESPONDENT
RAELI SAWEK CHEMUTAL .....	24 <sup>TH</sup> RESPONDENT
LINA CHEMUTAI LILIAN .....	25 <sup>TH</sup> RESPONDENT
JOYCE CHELANGAT .....	26 <sup>TH</sup> RESPONDENT
JOHN MUTAL .....	27 <sup>TH</sup> RESPONDENT
ALICE CHEPNGETICH KORIR .....	28 <sup>TH</sup> RESPONDENT
LINAH CHEPKEMOI KAMOING .....	29 <sup>TH</sup> RESPONDENT
ALFRED KOECH KORIR .....	30 <sup>TH</sup> RESPONDENT
SIMION MUTAI .....	31 <sup>ST</sup> RESPONDENT
JANE CHEPCHUMBA CHEPKWONY .....	32 <sup>ND</sup> RESPONDENT
WESLY CHEPKWONY .....	33 <sup>RD</sup> RESPONDENT
GEOFREY KIPNGETICH SAWE .....	34 <sup>TH</sup> RESPONDENT
JOYCE CHEPKOECH .....	35 <sup>TH</sup> RESPONDENT
IRINE CHEPKOECH .....	36 <sup>TH</sup> RESPONDENT
WILLITER CHEPNGETICH .....	37 <sup>TH</sup> RESPONDENT
VERONICA KAMING CHEMELL .....	38 <sup>TH</sup> RESPONDENT
ALFRED KIPNGETICH MUTAL .....	39 <sup>TH</sup> RESPONDENT
SIMION BII .....	40 <sup>TH</sup> RESPONDENT
VIOLET CHERONO .....	41 <sup>ST</sup> RESPONDENT
JACKSON BLI .....	42 <sup>ND</sup> RESPONDENT
ELIJAH KEBENEI .....	43 <sup>RD</sup> RESPONDENT
MERCY CHEBET .....	44 <sup>TH</sup> RESPONDENT
BENJAMIN LANGA .....	45 <sup>TH</sup> RESPONDENT

## RULING

1. Vide an Application by way of Notice of Motion dated December 24, 2021 brought under the provisions of Order 51 Rule 1 of the [Civil Procedure Rules](#) Order 40 rule 1(a) and (b) rule 4(2) and rule



- 10, section 3A of the *Civil Procedure Act* cap .21 Laws of Kenya and all other enabling provisions of the Law, the Applicant herein seeks for interim injunctive orders restraining the 6<sup>th</sup> – 46<sup>th</sup> (sic) Defendants/ Respondents by themselves, their servants, agents, employees or any other person or persons, any third party or third parties from occupying, from entering, from interfering, from cultivating, from constructing, from living thereon, from alienating, from charging, from selling, from leasing, from sub-dividing, from gifting and/or in any manner from interfering with the Plaintiff's parcel of lands known as LR No. Kericho Municipality Block 5/159 situate in Kericho town or the sub-divisions and/or the plots thereunder pending the hearing and determination of this suit and/or until further orders of the Honourable court. The Applicant further sought for the cost of the Application to be in cause.
2. The said Application was premised on the grounds on the face of it and supported by an affidavit sworn by the Applicant Dave Kipkorir Langat on the December 24, 2021.
  3. The Application was disposed of by way of written submissions and I shall endeavor to summarize the lengthy submissions as follows;
  4. The Applicant's contention was that pursuant to the Plaintiff/Applicant having filed a Petition before the High Court of Kenya at Kericho being Petition No. 1 of 2013 Dave Kipkorir Langat vs District Physical Planning Officer Kericho County & 4 Others, (1<sup>st</sup> -5<sup>th</sup> Respondents) judgment had been delivered on the 5<sup>th</sup> May 2015 in favour of the Applicant wherein the court had found that the Applicant's constitutional right had been infringed by the Respondents therein, when they arbitrary interfered and amended the original survey plan and/or original PDP and thereafter sub-divided the suit land LR No. Kericho Municipality Block 5/159 into small plots of 40 X 80 sq feet, with the intention of allocating the same to third parties.
  5. The court had then directed the Registrar of Titles, the Commissioner of Land or any person authorized on their behalf to cancel delete and/or remove any entries of the interference with the Petitioner's suit land. They had also been ordered to refrain from implementing whatsoever the contents of the Respondents' illegal and unconstitutional acts. They had also been restrained, by themselves, their servants and/or agents whomsoever from amending the original survey plan, re-amending the original PDP or sub dividing the suit land LR No. Kericho Municipality Block 5/159 into small plots of 40 x 80 sq feet with the intent to allocate the same to members of the Talai Community or any other third party.
  6. That subsequent to the delivery of the Judgment, the 1<sup>st</sup> to 5<sup>th</sup> Defendants/Respondents had breached the orders of the court where they had proceeded to issue allotment letters, amended the survey maps together with the original PDP. The Applicant filed contempt proceedings against them wherein vide a ruling of 2<sup>nd</sup> December 2021, the court had found them to be in contempt.
  7. That the said contempt of the court orders by the 1<sup>st</sup> to 5<sup>th</sup> Defendant/Respondents had in turn resulted into the settlement of the 6<sup>th</sup> to 46<sup>th</sup> (sic) Defendant/Respondents on the plots measuring 40 x 80 sq feet comprised in the Applicant's parcel of land No. LR No. Kericho Municipality Block 5/159.
  8. That the judgment having been entered in his favour, the Applicant was entitled to full and exclusive possession and ownership of his land. The occupation by the 6<sup>th</sup> to 46<sup>th</sup> Defendant/Respondents therefore amounted to trespass which was unlawful and illegal. The Applicant had thus sought for their eviction, which was to be carried out with supervision of the County Commander of Police- Kericho, and the OCS Kericho Police station, who would provide security to the court bailiffs to ensure that order and law prevailed during the eviction exercise on the suit parcel of land No. LR No. Kericho Municipality Block 5/159.



9. In response to the Applicant's Application, the 2<sup>nd</sup> -5<sup>th</sup> Respondents through the office of the Hon. Attorney General filed their grounds of opposition dated 4<sup>th</sup> April 2022 to the effect that the Application did not meet the laid down threshold for such an equitable remedy. That the orders sought would best be determined in the main suit. That the injunctive orders sought had been overtaken by events, settlement and physical possession having been completed by the year 2012 well before Judgment in Petition 1 of 2013, facts which were well within the knowledge of the Applicant. That the Application had been brought too late in the day and was an attempt to steal a march from the 6<sup>th</sup> -46<sup>th</sup> (sic) Respondents in their defence in a substantive suit.
10. That the wheels of justice dictate that the order of status quo be issued pending the hearing and determination of the main suit.
11. A Replying Affidavit sworn by one Jane Chepkosgei Sitienei, the 7<sup>th</sup> Respondent, on the July 5, 2022 on behalf of the 6<sup>th</sup> to the 46<sup>th</sup> (sic) Respondents, and in opposition of the Application, was to the effect that the impugned judgment herein entered on the 5<sup>th</sup> May 2015 was not binding on them for reasons that the Applicant in that matter had neither sued them nor raised any claim against them in regard to the suit property herein.
12. That they were the Bona fide owners of properties now known as plot Nos 17, 18, 19-32, 163-173, 183-190 and 251-256 having been allotted the same in the year 2013, as members of the Talai community (also known as Kipsigis laibon) wherein they had taken possession and have been in occupation since time immemorial. Land which they regarded as their ancestral land. That the land has never been alienated and/or allocated to third parties let alone the Plaintiff herein who has never taken possession of the same.
13. That they had all along occupied the suit land as it comprises part of their ancestral land even though they were only formally allocated the same by the Government upon completion of the Part Development Plan (PDP) No. R22/2011/01 which had been earmarked for the resettlement of the members of the Talai Community in the year 2013 as per the annexed documents being a letter ref No L&O 4/1/2/206, a letter dated 13<sup>th</sup> November, 1947, a copy of the Laibons Removal Ordinance No. XXX of 1934, copies of letters Ref No's L&O 4/1/2/284 by the Colonial Provincial Commissioner, Nyanza, a letter dated 20<sup>th</sup> April 1945, letter dated 5<sup>th</sup> July 1973 by the District commissioner, Kericho, an extract of the Hansard containing parliamentary proceedings of November 16, 2011, a notice dated August 17, 2011 and a bundle of photographs showcasing their homes on the suit land.
14. That on his part, the Plaintiff/Applicant only relied on a certificate of lease issued in his favour in the Judgment dated May 5, 2015 which ruled in his favour, but had neither proved a prima facie case nor that he stood to suffer irreparable harm were the interim orders of injunction as sought declined. That the interim orders of injunction as sought were tantamount to orders of eviction against them thus occasioning them undue hardship. They sought that the Application be dismissed.

### **Determination**

15. The celebrated case of *Giella vs Cassman Brown* (1973) EA 358 sets out conditions for the grant of an interlocutory injunction as follows:-
  - i. Is there a serious issue to be tried( prima facie case)
  - ii. Will the Applicant suffer irreparable harm if the injunction is not granted;
  - iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience").



16. On the first issue as to whether the plaintiff/applicant in this matter has made out a prima facie case with a probability of success, I am guided by the case of *Mrao v First American Bank of Kenya Limited & 2 others* (2003) KLR 125, where a prima facie case was described 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.”
17. The Court has been moved under a Certificate of Urgency, by the Applicant, to issue temporary injunction against the 6<sup>th</sup> -46<sup>th</sup> Respondents. I have however considered the number of the additional Respondents and find that they are 45 Respondents, number 42 having been skipped. At this stage, the Court is only required to determine whether the Applicant is deserving of the Orders sought. The Court is not required to determine the merit of whether the Applicant herein has demonstrated that he has a genuine and arguable case or not.
18. In this matter, the plaintiff/applicant in his Plaint dated the December 24, 2021 is seeking that judgment be entered against 1<sup>st</sup> to 46<sup>th</sup> (sic) Defendants jointly and severally for a declaration that the 6<sup>th</sup> to the 46<sup>th</sup> (sic) Defendants are, by dint of the judgment rendered on the May 5, 2015 in Kericho High Court Petition No.1 of 2013, were trespassers on his parcel of land known as land parcel known as LR No. Kericho Municipality Block 5/159 situate in Kericho town. That he was therefore entitled as a necessary incident of that ownership, to have full and exclusive possession of the suit land against the 6<sup>th</sup> to the 46<sup>th</sup> (sic) Defendants who should vacate or be evicted therefrom under the security of the OCS Police Station, Kericho County and County Commandant of Police, Kericho.
19. The Applicant further sought for permanent injunctive orders to issue restraining the 6<sup>th</sup> to 46<sup>th</sup> (sic) Defendants by themselves, their servants, agents, employees or any other person or persons, any third party or third parties from occupying, from entering, from interfering, from cultivating, from constructing, from living thereon, from alienating, from charging, from selling; from leasing, from sub-dividing, from gifting and/or in any manner from interfering with the Plaintiff's aforesaid parcel of lands known as LR No. Kericho Municipality Block 5/159 situate in Kericho town or the sub-divisions and/or the plots thereunder, costs of the suit and interest at court rates and any other or further orders that the Court would deem it fit and necessary to grant.
20. There is no dispute that the 6<sup>th</sup> -45<sup>th</sup> Respondents herein were not party to the Petition filed before the High Court of Kenya at Kericho, being Petition No. 1 of 2013 Dave Kipkorir Langat vs. District Physical Planning Officer Kericho County & 4 Others, (1<sup>st</sup> -5<sup>th</sup> Respondents) wherein judgment had been delivered on the 5<sup>th</sup> May 2015 in favour of the Applicant.
21. Any eviction order has far reaching implications as it entails the forceful removal of a party from land that he/she or in this case they, has/have been in occupation/possession of for some time. Before such an order is given, the court must be satisfied on its merits which means any person who stands to be affected by any order the court may make, is entitled to be heard. The Plaintiff/Applicant has in this matter confirmed that ownership of the suit land had already been determined, but the Respondents herein have argued that they were not party to those proceedings and would be greatly prejudiced if the orders sought were granted without giving them an opportunity to be heard. I agree.
22. Indeed it is trite law more so considering the provisions of article 50(1) of the Constitution, that stipulates that every person has the right to have any dispute that can be resolved by the Application of law decided in a fair and public hearing before a court or, if appropriate, another independent and



impartial tribunal or body and more where adverse orders such as eviction orders are sought. I find that in order to evict the 6<sup>th</sup> to 45<sup>th</sup> Respondents formally so as to take possession of the suit land, they ought to be given their day in court.

23. The issue that I need to determine would be what orders are best suited in the instance case.
24. Having considered the submissions by Counsel, the Application and relevant law, I find that since at this stage the court is not required to make final findings of contested facts but to weigh the relative strength of the parties cases as observed by Lord Diplock in *American Cyanamid Co v Ethicon Limited* (1975) 1 ALL ER 504; (1975) AC 396 HL at 510 where he stated as follows:

“It is no part of the court's function at this stage of the litigation to try and resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.’,

25. I have anxiously considered the Applicant's Application herein and further considered the fact that the 6<sup>th</sup> to 45<sup>th</sup> Respondents are in occupation and possession of the suit land herein and I find that issuing the orders sought would amount to an eviction which is premature at this stage. To this effect, I find that the Applicant has not established a prima facie case herein.
26. That having been said, I need not consider the other two conditions for the grant of temporary injunction as established in the Giella case (supra) as the conditions are sequential such that when the first condition fails then there is no basis upon which the court can give an injunction unless the court was entertaining a doubt as to whether or not a prima facie case had been established. The Court of Appeal in the case of *Kenya Commercial Finance Co. Ltd -vs- Afraba Education Society* (2001) IEA 86 cited by Gitumbi, J with approval in the case of *Joseph Wambua Mulusya v David Kitu & another* (2014) eKLR observed as follows:-

“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is sequential so that the second condition can only be addressed if the first one is satisfied”.

27. I therefor find that the balance of convenience does not tilt in favour of granting the injunctive orders sought and therefore the order that best commends itself in the circumstances of this case is an order of status quo, to this effect;
- i. Parties shall maintain the status quo prevailing pending the hearing and determination of the suit.
  - ii. Parties shall set down this matter for hearing expeditiously by complying with the provisions of Order 11 of the *Civil Procedure Rules* within the next 21 days upon delivery of this ruling
  - iii. Costs to be in cause.

**DATED AND DELIVERED VIA TEAMS MICROSOFT AT KERICHO THIS 23<sup>RD</sup> DAY OF FEBRUARY 2023.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

