



In re Estate of Barnabas Tuitoek Bargaroria (Deceased) (Succession Cause E120 of 2022) [2025] KEHC 11978 (KLR) (11 August 2025) (Ruling)

Neutral citation: [2025] KEHC 11978 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E120 OF 2022
RN NYAKUNDI, J
AUGUST 11, 2025**

IN THE MATTER OF THE ESTATE OF BARNABAS TUITOEK BARGORIA (DECEASED)

BETWEEN

**SALINAH JEMUTAI BARGORIA 1ST ADMINISTRATOR
VICTOR KIPKEMEI BARGORIA 2ND ADMINISTRATOR
MMAURINE JELAGAT BARGORIA 3RD ADMINISTRATOR
REBECCA JEPKEMOI BARGORIA 4TH ADMINISTRATOR**

AND

LOISE JEROP BARGORI APPLICANT

AND

**TARITA FARM LIMITED RESPONDENT
DANIEL KIPTOO BARGORIA RESPONDENT**

RULING

1. Before me for determination is summons for orders to preserve and protect the estate of the deceased dated 9th June, 2025 in which the applicant seeks the following reliefs:
 - a. The respondents herein be restrained against intermeddling and wasting of the deceased estate and in particular that property known as Kiplombe/KuinetBlock2 [Rotich And Birech] 21.
 - b. That costs of this application be provided for.
2. The summons is based on grounds that:



- a. The Respondents without any colour of right encroached into land parcel Kiplombe/Kuinet Block2 [Rotich And Birech] 21 measuring approximately 12.26 Ha.
 - b. The Respondents are in the process of establishing petrol pump station, greenhouses for commercial horticultural farming and a water bank notwithstanding the fact that the Residents of the said community have vehemently opposed the said ongoing activities due to their health and environmental hazards, lack of due legal processes as well as lack of public participation.
 - c. That the beneficiaries of the estate of the deceased are not aware of the circumstances under which the Respondents are utilizing the said parcel of land belonging to the deceased person herein and still registered under his name.
 - d. The estate of the deceased is yet to be distributed including land parcel Kiplombe/Kuinet Block 2 [Rotich And Birech] 21 which is a big portion of land and the beneficiaries have never consented to the Respondents utilizing the deceased person's land in any way, hence the respondents' actions not only amount to intermeddling of the deceased's estate but also wasting of the same to the detriment of the deceased person's beneficiaries as the intended investments are long term.
 - e. That it is imperative and in the interest of justice and fair play that this Honourable Court do intervene and issue the restraining orders sought against the Respondents as the estate of the deceased is suffering massive losses due to the Respondent' action of intermeddling.
 - f. That unless this Honourable Court issues orders restraining the Respondents herein from intermeddling with the deceased person's estate, the deceased person's estate is bound to continue facing wastage in the hands of the Respondents yet it is necessary to preserve the estate of the deceased and the wider interests of the beneficiaries.
3. In Response to the application, Alfred Too being the director of Tarita Farm Limited, the 1st Respondent deposed as follows:
- a. That the 1st Respondent denies every allegation of fact made by the applicant in her supporting affidavit dated 27th June, 2025 as if the same were set out verbatim and traversed seriatim and shall hold the applicant to strict proof thereof.
 - b. That the allegations in paragraph 1&2 of the applicant's supporting affidavit are allegations of fact that require strict evidence and proof – none of which has been proffered.
 - c. That the status of land parcel Kiplombe/Kuinet Block2 [Rotich & Birech] 21 is complex and multifaceted and it will be unjust to allow the instant application without allowing the court an opportunity to fully itself of the relevant facts.
 - d. That the 2nd Respondent specifically denies the allegations in para 5, 6, 7, 8 & 9 of the applicant's supporting affidavit and it would be unjust and non-judicious to allow the instant application without specific evidence of the infractions alleged by the applicant.
 - e. That claims of environment infringement should in any event be canvassed by the Environment and Land Court which has the requisite jurisdiction. The same notwithstanding, the first Respondent had submitted an application for Environmental Impact Assessment which is pending approval.



- f. That it is imperative and in the interests of justice that this court not issue the injunction has not been succinctly established by the applicant.

Applicant's written submissions

4. Learned Counsel Mr. Nyachiro gave a factual background of the instant application and identified three issues for determination, which are:
 - a. Whether the Respondents are intermeddling and wasting the deceased estate;
 - b. Whether the reliefs sought by the applicant are merited;
 - c. Who should bear the cost of this application,
5. On the 1st issue, learned counsel Mr. Nyachiro submitted that the 2nd Respondent vehemently denied committing any acts of intermeddling and wasting the deceased's estate through the 1st Respondent company, while on the other hand in his replying affidavit he acknowledges that he has been in possession of the subject suit property even before the death of the deceased.
6. According to the applicant, a search on the 1st Respondent in the Company's Registry indicate that the 1st Respondent is a Kenyan Company whose address is P.O. Box 249, Eldoret. The company according to the search records has two directors, one Alfred Cheruiyot Too who does not have any shares and Tarita Group [Mauritius] Limited, the latter having been allotted all the one thousand [1,000] nominal shares of the 1st Respondent. That the said postal address for Tarita Group [Mauritius] is their family address, which fact shows the 2nd Respondent is hiding behind a purported foreign registered company, being Tarita Group [Mauritius], to exploit the estate of the deceased through the 1st Respondent to the detriment of the other dependants of the deceased.
7. Mr. Nyachiro further submitted that the 2nd Respondent does not deny erecting the greenhouses or making plans to build a petrol pump station on the subject suit property, all he is denying is being a director of the 1st Respondent which is carrying out the said developments. He maintains that he has been in occupation of the said property, a fact which implies that he is either carrying out the developments but hiding behind the 1st defendant, or he has authorized the said developments.
8. It is submitted for the applicant that the fact of having been seized with possession of the property in question does not entitle the 2nd Respondent to deal with estate in a manner that is likely to disadvantage other beneficiaries such as putting up long term developments with serious adverse environmental impact which are likely to dissipate the deceased's estate before it is distributed to its beneficiaries.
9. In support of his submissions, counsel relied on the provisions of 45 of the Succession Act and the case of Benson Mutuma Muriungi v. C.E.O Kenya Police SACCO and another [2016] eKLR and Re Estate of Benson Maingi Mulwa [deceased] [2021].
10. As to whether the reliefs sought by the applicant are merited, learned counsel submitted that the applicant seeks interim injunctive relief barring the respondents from further intermeddling of the subject suit property. It is submitted for the applicant that this honourable court is vested with jurisdiction to grant such relief pursuant to Rule 63 of the Probate and Administration Rules, which follows for the application of the Civil Procedure Rules in succession matters.
11. Mr. Nyachiro cited the decision in *Giella v. Cassman Brown* [1973] 358, *American Cyanamid Company v Ethicom Limited* [1973] A AER and the Court of Appeal decision in *Nguruman Limited v Jan Bonde Nielson & 2 others* [2014] eKLR. On the strength of these decision, learned counsel



submitted that the applicant has satisfied all the necessary elements for the grant of a temporary injunction, highlighting that the applicant is a beneficiary of the deceased's estate and he has availed evidence that there are greenhouses on the subject suit property and despite the 2nd Respondent denying erecting such structures, he admits being in possession of the suit property.

12. It is further submitted for the applicant that the fact of the Respondents putting up a petrol station and green houses on the suit property, which are likely to dissipate the suit property by way of adverse environmental impact qualifies the applicant's application to pass the "irreparable injury" test.

Beneficiary's written submissions

13. Learned counsel for the beneficiary submitted that the applicant has locus to bring the application dated 27th June 2025 for preservation of the deceased estate as a beneficiary. In making this submission, counsel argued that any person interested in the state of a deceased person as a beneficiary or otherwise is properly entitled to move the court and seek orders intended to preserve the estate, and it is therefore not mandatory that such an application be made by the administrators or with consent or authority of the other beneficiaries since a beneficiary is properly entitled to protect his or her interest in the estate.
14. In doing so, he relied on the case of *In Re Estate of Benson Maingi Mutwa [deceased] [2021] eKLR* where Odunga J held that since intermeddling can be committed even by administrators, any person interested in the state of a deceased person as a beneficiary or otherwise is properly entitled to move the court and seek orders intended to preserve the estate.
15. Counsel further argued that Section 45 of the *Law of Succession Act* provides that except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a deceased person. Sub-section [2] further provides that any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or both fine and imprisonment.
16. He relied on the case of Hon Justice Musyoka in *Veronica Njoki Wakagoto [Deceased] [2013] eKLR* which expounded that the effect of section 45 is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. That such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling.
17. Counsel argued that the Respondents have since taken possession of deceased property and established a petrol pump station, greenhouses for commercial horticulture farming and water bank in the deceased property without any authority as required under law of succession.
18. He submitted that the Applicant has annexed a certificate of official search evidencing that indeed the property in question belongs to deceased and forms part of deceased estate to be distributed to all beneficiaries. In addition, the Applicant has put in evidence to show the interference and intermeddling of the deceased property by the Respondent.
19. Counsel submitted that the High Court has jurisdiction under the provisions of section 47 of the *Law of Succession Act* and Rule 73 of the Probate & Administration Rules to issue such orders and decrees as may be expedient and necessary for the ends of justice. That the court has power to issue orders for preservation of the estate to stop intermeddling as prayed in the Application dated 27th June 2025.
20. In conclusion, learned counsel submitted that in view of the above quoted precedents *law of succession Act* and probate rules, the Honourable court should allow the application dated 27th June 2025 in terms of prayer 3 in order to preserve the estate of the deceased for the benefit of all beneficiaries and justice.



It was their humble submission that the Application dated 27th June 2025 should be allowed and the estate of the deceased should be preserved.

The 2nd Respondent's written submissions

21. Learned counsel Mr. Adede submitted that the Applicant has not met the threshold for the grant of the reliefs being sought to restrain the Respondents from the actions complained of.
22. On the issue of jurisdiction, learned counsel argued that this Honourable Court, sitting as a Probate and Administration Court, is bereft of jurisdiction to determine a claim of land encroachment. Counsel submitted that this is a question fit to be canvassed by the Environment and Land Court. He argued that the Law of Succession does not give this Court the power to determine questions on the ownership of the suit parcel of land or make a determination on the alleged issue of encroachment. Counsel's submission was that this Court is bereft of jurisdiction to entertain the matter as the application is grounded on the issue of encroachment which ought to be filed at the Environment and Land Court.
23. In doing so, he relied on Section 13 of the *Environment and Land Court Act*, which provides that in exercise of its jurisdiction under Article 162[2][b] of *the Constitution*, the Court shall have power to hear and determine disputes relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; compulsory acquisition of land; land administration and management; public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and any other dispute relating to environment and land.
24. Counsel relied on the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil [Kenya] Ltd [1989] where the Court pronounced itself that "Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."
25. Counsel argued that this instant application revolves around the issue of encroachment of land which this Honourable Court has no jurisdiction to entertain.
26. On whether this court should issue the orders sought, learned counsel submitted that the conditions for grant of Temporal Injunction are well set out in the case of Giella v Cassman Brown [1973] EA 358 which the Court of Appeal applied in its decision in Charter House Investment LTD v Simon K. Sang & Ano. Civil Appeal No. 3165 Of 2005 Eldoret, stating that "Injunction is an equitable and discretionary remedy given when the subject matter of the case before the court requires protection and maintenance of status quo. The award of a temporary injunction by courts of equity has never been regarded as a matter of right even where irreparable injury is to result to the applicant. It is a matter of sound judicial discretion in the exercise of which the court balances the convenience of the parties and the possible injuries to them and to third parties."
27. Counsel submitted that the Applicant alleges that the 2nd Respondent has encroached and intermeddled into the subject property and are in the process of establishing a petrol pump station, greenhouses. However, counsel argued that the Applicant has not produced any evidence in the nature of a report from a technical expert including a surveyor, a complaint lodged to the environmental regulating authority i.e. NEMA or any police abstract founded on the environmental complaints to support her allegation. He submitted that the only document produced is a single photograph that is



devoid of the evidentiary requirements of electronic evidence that courts of law are to rely on. Counsel argued that it is trite in law that he who alleges must prove, and the Applicant has failed to prove her allegation. He submitted that the record shows that no certificate of electronic evidence has been submitted in support of the subject photograph submitted by the applicant.

28. Counsel submitted that the Applicant stands to suffer no substantial loss that cannot be adequately compensated by an award of damages. He argued that the record shows that the Respondent has not encroached into the subject property and the Applicant has failed to demonstrate in her application how she will suffer irreparable damage. Counsel submitted that most importantly, the allegations of the community complaints has not been substantiated.
29. On the balance of convenience, counsel argued that the balance of convenience tilts in favour of the 2nd Respondent in the circumstances of this case. In doing so, he relied on the case of Paul Gitonga Wanjau v. Gathuthis Tea Factor Company Ltd & 2 others [2016] eKLR, where the court dealing with the issue on balance of convenience expressed itself thus: "it is our argument that all the three conditions of injunctions have not been met by the Applicant hence the application should not be allowed. The Applicant's application is an abuse of the court process and waste of the court's time. The same application tends to address issues that can best be well conversed and determined in the Environment and Land Court. The applicant therefore does not meet the condition to be granted the orders sought."
30. In conclusion, learned counsel submitted that the balance of convenience in this application tilts in favor of the Respondents considering all the facts herein. Counsel argued that the prayers being sought are not justifiable and prejudices the 2nd Respondent. He submitted that the Applicant actions are utterly malicious and selfish, and it is their humble submission that the Applicant stands to suffer no irreparable loss in the event that the orders sought are not granted. Counsel concluded that it is in the interest of justice that the Applicant's application be dismissed in its entirety.

Analysis and determination

31. Having considered the application, the response and the rival submissions by both parties, the central question that arises for determination in this application is whether the respondents are intermeddling with the estate of the deceased Barnabas Tuitoek Bargarora, particularly in relation to land parcel Kiplombe/Kuinet Block 2 [Rotich And Birech 21, and whether orders of temporary injunction should be issued to restrain further dealings with the said property pending proper administration and distribution of the estate.
32. The Court in Re Estate of M'Ngarithi M'Miriti [2017] eKLR had this to say on intermeddling:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under Section 45 of the *Law of Succession Act*. That is why the law has a very firm stance on intermeddling and has



clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order[s] of protection of the estate against any person.”

That is the position taken by the Court in *John Marete Kirema & Another v Gladys Karimi Muthamia & 3 Others* [2013] eKLR Makau J held that:

“My understanding of Section 45 of the *Law of Succession Act* is that when the Court finds the deceased property is in danger of being intermeddled with it can on its own motion issue appropriate orders to preserve the deceased estate pending regularization of any process that needs to be regularized ...”

There is no excuse or justification for any of the legitimate beneficiaries to intermeddle with the estate before distribution. The law itself gives a saving grace period that a certificate of confirmation of grant can be decreed by a probate court before the expiry of six [6] months. The family of the deceased should take advantage of the law to avoid any acts of intermeddling which are punishable under the criminal law.

33. What the applicant seeks are essentially orders of interlocutory injunction to preserve the deceased's estate from alleged wastage and intermeddling. It is now settled law, as was held in the case of *Floris Piezzo & Another v Giancarlo Falasconi* [2014] eKLR, that a Probate Court has powers under Section 47 of the *Law of Succession Act* and also Rule 73 of the Probate and Administration Rules to grant temporary injunctions for the preservation of estates.
34. Before examining the merits of the application, I must first address the preliminary objection raised by the 2nd Respondent regarding this court's jurisdiction. Learned counsel for the 2nd respondent has argued that this court, sitting as a Probate and Administration Court, lacks jurisdiction to determine claims of land encroachment, which ought to be canvassed by the Environment and Land Court pursuant to Section 13 of the *Environment and Land Court Act*.
35. While I acknowledge that the Environment and Land Court has jurisdiction over land disputes including boundaries and encroachment matters, the present application is not fundamentally about land ownership or encroachment per se. Rather, it concerns the preservation of estate property from alleged intermeddling and wastage. The applicant, as a beneficiary of the deceased's estate, seeks to protect estate assets from being dissipated pending proper administration and distribution. This falls squarely within the jurisdiction of this court as a succession matter under the *Law of Succession Act*. This argument on jurisdiction is ill informed on the codification of the *Law of Succession Act*. This Court has the jurisdiction to identify the beneficiaries to the estate under Section 29 of the Act and further settle on the net estate of the deceased to be distributed to the beneficiaries. This court in exercising that jurisdiction issued a Grant of Letters of Administration Intestate duly amended and dated 24th January 2025. From that moment the Court was seized of jurisdiction in the matter of the estate of Barnabas Tuitoek Bargarioria.
36. The fact that the relief sought may incidentally touch on land matters does not divest this court of its jurisdiction to protect estate property from intermeddling. The primary cause of action is rooted in succession law, specifically the preservation of estate assets under Section 45 of the *Law of Succession Act*, which this court is competent to adjudicate upon.
37. The principles guiding applications for temporary injunctions are well settled and were comprehensively set out in the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and *American Cyanamid Co. v Ethicom Limited* [1975] ALLER. Following these authorities, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR established that in an interlocutory injunction application, the applicant must satisfy three distinct requirements: first,



establish a prima facie case; second, demonstrate irreparable injury if the temporary injunction is not granted; and third, show that the balance of convenience is in their favour.

38. These three pillars form the foundation of any order of injunction and must be applied as separate, distinct hurdles which the applicant is expected to surmount sequentially. If the applicant establishes a prima facie case, that alone is not sufficient basis to grant an interlocutory injunction. The court must further be satisfied that the injury the applicant will suffer, in the event the injunction is not granted, will be irreparable.
39. The law relating to intermeddling is codified in Section 45 of the *Law of Succession Act* Cap 160, laws of Kenya as follows: -
- i. Except so far as expressly authorized by this Act or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - ii. Any person who contravenes the provisions of this section shall –
 - a. be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - b. be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”
40. The beneficiaries to this estate have been issued with the initial Grant of Letters of Administration tailored towards the administration of the estate. There is therefore need to preserve the subject matter of the cause of action on inheritance rights. This therefore calls the powers of this court to be exercised so that the property is not wasted or dissipated before the devolution to the heirs. A temporary injunction will therefore be necessary pending the determination of the distribution on the merits.
41. On the first element, the Court of Appeal in *Mrao Ltd v First American Bank of Kenya and 2 others* [2003] KLR 125 defined a prima facie case as one which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.
42. In the present case, it is undisputed that the deceased Barnabas Tuitoek Bargarioria died and left behind estate property including land parcel Kiplombe/Kuinet Block 2 [Rotich And Birech 21. The property remains registered in the deceased's name, and the estate is yet to be distributed among the beneficiaries. The applicant has produced a certificate of official search evidencing that the property in question belongs to the deceased and forms part of the deceased estate.
43. The applicant alleges that the respondents, without any colour of right, have encroached into the land parcel and are in the process of establishing a petrol pump station, greenhouses for commercial horticultural farming and a water bank. The respondents do not deny these developments but rather challenge the applicant's right to bring the application and argue that they have lawful authority to develop the property.
44. The 2nd respondent's admission that he has been in possession of the property, coupled with the evidence of ongoing developments on the land, raises serious questions about whether these activities



- constitute intermeddling with the deceased's estate. The fact that the estate has not been distributed and no grant of representation has been issued to authorize such extensive commercial developments suggests that the respondents' actions may indeed amount to unauthorized intermeddling.
45. I therefore find that the applicant has established a prima facie case that the respondents are intermeddling with the deceased's estate by conducting extensive commercial developments on estate property without proper authorization under the *Law of Succession Act*.
 46. The second limb requires the applicant to demonstrate that they stand to suffer irreparable injury that cannot be adequately compensated by damages if the injunction is not granted. As set out in Halsbury's Laws of England, irreparable injury means injury which is substantial and could never be adequately remedied or atoned for by damages, and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of jurisdiction by injunction if their rights cannot be adequately protected by damages.
 47. In this case, the evidence shows that the respondents are establishing permanent commercial structures including a petrol station and greenhouses on the estate property. These developments are long-term investments that would fundamentally alter the character and use of the land. The applicant has raised concerns about environmental hazards associated with these developments, particularly the petrol station, which could cause permanent damage to the property.
 48. More significantly, allowing these developments to continue would effectively permit the respondents to unilaterally determine how estate property should be utilized before the estate has been properly administered and distributed among all beneficiaries. This would prejudice the rights of other beneficiaries who have not consented to such developments and may have different views on how the family land should be used.
 49. The establishment of commercial infrastructure on the property creates practical difficulties in reversing such developments should the court ultimately find that they were unauthorized. The costs and practical challenges of dismantling commercial structures, combined with potential environmental remediation requirements, demonstrate that monetary compensation alone would be inadequate to remedy the harm.
 50. I am therefore satisfied that the applicant stands to suffer irreparable injury if the temporary injunction is not granted, as the continued development of the property may result in permanent alterations that cannot be easily undone through monetary compensation.
 51. The final requirement is that the balance of convenience must favour the grant of the injunction. This involves weighing the relative inconvenience that would be caused to each party by either granting or refusing the injunction.
 52. In considering this factor, I note that the respondents' developments appear to be proceeding without regard to the rights of other estate beneficiaries or proper legal authorization under succession law. The 2nd respondent's claim to have been in possession of the property does not, by itself, confer authority to make fundamental changes to estate property through extensive commercial development.
 53. On the other hand, granting the injunction would preserve the status quo and ensure that no irreversible changes are made to the estate property pending proper administration and distribution. This approach protects the interests of all beneficiaries and ensures that decisions about the use of family land are made through proper legal processes rather than unilateral action by one party. In my considered view this court is satisfied that the claim by other beneficiaries on intermeddling is not frivolous nor vexatious in other words there is a serious question to be tried on distribution of the estate. The governing principle as explained in the case of *American Cyanamid Co v Ethicon Ltd*. Is



that damages will not be an adequate remedy for the other beneficiaries should not the court interfere by granting temporary orders of injunction. In the case of National Commercial Bank of Jamaica Ltd. v Olint Corp Ltd. [2009] UKPC The court stated on the same principles as domesticated in our jurisprudence that in exercising jurisdiction to grant an injunction the court should be guided by the following principles:

“Among the matters which the court may take into account are the prejudice which the Plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the Court’s opinion of the relative strength of the parties’ cases.

There is however no reason to suppose that in stating these principles, Lord Diplock was intending to confine them to injunctions which could be described as prohibitory rather than mandatory. In both cases, the underlying principle is the same, namely, that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other; see Lord Jauncey in R v Secretary of State for Transport, ex parte Factortame Ltd [No 2] [1991] 1 AC 603, 682-683. What is true is that the features which ordinarily justify describing an injunction as mandatory are often more likely to cause irremediable prejudice than in cases in which a defendant is merely prevented from taking or continuing with some course of action; see Films Rover International Ltd v Cannon Film Sales Ltd [1987] 1 WLR 670, 680. But this is no more than a generalisation. What is required in each case is to examine what on the particular facts of the case the consequences of granting or withholding of the injunction is likely to be. If it appears that the injunction is likely to cause irremediable prejudice to the defendant, a court may be reluctant to grant it unless satisfied that the chances that it will turn out to have been wrongly granted are low; that is to say, that the court will feel, as Megarry J said in Shepherd Homes Ltd v Sandham [1971] Ch 340, 351, “a high degree of assurance that at the trial it will appear that at the trial the injunction was rightly granted.”

54. The balance of convenience therefore tilts in favour of preserving the estate property in its current state pending proper administration. The need to protect estate assets from potential dissipation outweighs any inconvenience the respondents may suffer from temporary restraint of their development activities.
55. Having considered all the evidence and submissions, I find that the applicant has satisfied the conditions necessary for the grant of a temporary injunction. The respondents' actions in developing commercial infrastructure on estate property without proper authorization under the [Law of Succession Act](#) constitutes intermeddling with the deceased's estate. The need to preserve estate property for the benefit of all beneficiaries pending proper administration justifies the grant of protective orders.
56. The estate of Barnabas Tuitoek Bargoria must be protected from further intermeddling and potential dissipation until such time the estate is distributed amongst the rightful beneficiaries of the estate.
57. Accordingly, the following orders do abide:
 - a. The Respondents herein, whether by themselves, their servants, agents, employees or assignees, are hereby restrained from intermeddling with the estate of the deceased Barnabas Tuitoek Bargoria and in particular from further developing, disposing of, charging, transferring,



subdividing or in any manner dealing with land parcel Kiplombe/Kuinet Block 2 [Rotich And Birech 21 pending the determination of this succession cause.

- b. The Respondents are specifically restrained from establishing or continuing the construction of any petrol pump station, greenhouses, water bank or any other commercial infrastructure on the said property pending proper administration and distribution of the estate until there is a consensus by both parties.
- c. Given the gravitas issues and the competing interests in the intestate estate, the administrators shall move expeditiously to apply for confirmation of the Grant.
- d. A status conference is hereby scheduled on 18th September, 2025 for purposes of monitoring compliance with the order of preservation and for the Administrators to deal with the predominant issue of the dispute which is distribution of the estate.
- e. These orders for purposes of execution and compliance shall be brought to the attention of the OCS and the Area chief through the Deputy Registrar of the High Court.
- f. The costs of this application shall be costs in the cause. Each party to be at liberty to apply.

58. Orders accordingly.

DATED AND SIGNED AND DISPATCHED VIA EMAIL AND CTS AT ELDORET ON THIS 11TH DAY OF AUGUST 2025.

.....

R. NYAKUNDI

JUDGE

