



**Wanyangu & another (Suing as the Administrators of the Estate of James Muchiri Kabii and Thomas Irungu Muchiri Kabii) v Odongo & 3 others (Environment and Land Case E006 of 2025) [2025] KEELC 6430 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6430 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE E006 OF 2025  
SO OKONG'O, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**STANLEY MUKOLWE WANYANGU ..... 1<sup>ST</sup> PLAINTIFF  
CATHERINE WAIRIMU KABII GICHIRA ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE ADMINISTRATORS OF THE ESTATE OF JAMES MUCHIRI  
KABII AND THOMAS IRUNGU MUCHIRI KABII**

**AND**

**THOMAS ODUM ODONGO ..... 1<sup>ST</sup> DEFENDANT  
WILLIAM OTONDI ODERO ..... 2<sup>ND</sup> DEFENDANT  
CHRISTINE AWINO DONDO ..... 3<sup>RD</sup> DEFENDANT  
THE COUNTY LAND REGISTRAR KISUMU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiffs brought this suit against the Defendants by way of a plaint dated 11<sup>th</sup> February 2025. The Plaintiffs averred that James Muchiri Kabii, deceased (hereinafter referred to only as “the deceased”), was at all material times registered as the owner of all that parcel of land known as East Kisumu/ Kanyakwar B/128 (hereinafter referred to as “the suit property”), which he acquired in 1983 and was issued with a land certificate on 14<sup>th</sup> October 1983. The Plaintiffs averred that, following the deceased's death, they applied for and were issued with a Grant of Letters of Administration in respect of his estate, which was confirmed on 22<sup>nd</sup> September 2020. The Plaintiffs averred that as part of their routine due diligence, they conducted a search on the title of the suit property around November 2024, which revealed that the property had been illegally and fraudulently transferred to the 1<sup>st</sup> Defendant and sold to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The Plaintiffs averred that a survey they conducted on 29<sup>th</sup> November



2024 showed that the suit property was vacant. The Plaintiffs averred that on 4<sup>th</sup> February 2025, their agent visited the suit property and found the same fenced. The Plaintiffs averred that the Defendants were in the process of commencing development on the suit property. The Plaintiffs sought judgment against the Defendants for; a declaration that the transfer of the suit property to the 1<sup>st</sup> Defendant and subsequently to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants was fraudulent, illegal, null and void, an order cancelling the transactions and reinstating the property in the name of the deceased, and a permanent injunction restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from entering, occupying, or dealing with the suit property in any manner whatsoever.

2. Together with the plaint, the Plaintiffs brought an application by way of a Notice of Motion dated 11<sup>th</sup> February 2025 seeking the following orders;

1. Spent.
2. Spent.
3. This Honourable court be pleased to grant an order restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from continuing with any construction, development, or any other activity on the suit property pending the hearing and determination of the suit.
4. Spent.
5. This court be pleased to issue an order restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from selling, transferring, leasing, charging, or in any way dealing with the suit property pending the determination of the suit.
6. Spent.
7. This court be pleased to issue an order restraining the 4<sup>th</sup> Defendant from registering any transaction involving the suit property pending the hearing and determination of the suit.
8. This court be pleased to order the 4<sup>th</sup> Defendant to produce the parcel file for the suit property.
9. The costs of the application to be in the cause.

3. The Application was based on the grounds set out on the face thereof and on the affidavit of Stanley Mukolwe Wanyangu sworn on 11<sup>th</sup> February 2025. The Plaintiffs reiterated that they were the administrators of the estate of the deceased, James Muchiri Kabii, who at all material times was the registered owner of the suit property. The Plaintiffs averred that they conducted a search on the title of the suit property around November 2024, which revealed that the property had been illegally and fraudulently transferred to the 1<sup>st</sup> Defendant, who subsequently sold the same to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The Plaintiffs averred that they sought to peruse the parcel file for the suit property at the 4<sup>th</sup> Defendant's office to ascertain the circumstances under which the suit property came to be registered in the names of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, but were told that the file was not readily available and that it would take time to retrieve the same. The Plaintiffs averred that they were issued with an extract of the register for the suit property, which showed that the 1<sup>st</sup> Defendant acquired the suit property through orders issued in Succession Cause No. 580 of 2008. The Plaintiffs averred that the said Succession Cause was unknown to them. The Plaintiffs averred that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants subsequently fenced the suit property in readiness for development. The Plaintiffs averred that the activities of the Defendants on the suit property were illegal and fraudulent and were intended to dispossess the beneficiaries of the estate of the deceased of the property. The Plaintiffs averred that they would suffer irreparable harm unless the orders sought were granted to restrain the Defendants' illegal activities on the suit property. The Plaintiffs annexed to the supporting affidavit copies of the



land certificate for the suit property, an official search on the title thereof, and an extract of the register for the property.

4. The application was opposed by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants through separate replying affidavits. The 1<sup>st</sup> Defendant opposed the application through an undated replying affidavit. The 1<sup>st</sup> Defendant averred that the parcels of land East Kisumu/Kanyakwar B/128 and 172 were his ancestral land and were adjudicated in his favour during the land adjudication exercise in the area in the 1980s. The 1<sup>st</sup> Defendant averred that in 1983, he gave the deceased, James Kabii, the particulars of the two properties so that the deceased could help him process the title deeds for the same in consideration of his (1<sup>st</sup> Defendant) selling to the deceased a portion of East Kisumu/Kanyakwar B/172. The 1<sup>st</sup> Defendant averred that he subsequently entered into an agreement of sale with the deceased in respect of a portion of East Kisumu/Kanyakwar B/172, which he sold to the deceased at Kshs. 20,000/-, which the deceased paid in full. The 1<sup>st</sup> Defendant averred that he visited the deceased at his place of work at the then Barclays Bank, Kisumu, on several occasions to follow up on his title deeds for the suit properties, and what he received were promises from the deceased that he was attending to the issue. The 1<sup>st</sup> Defendant averred that he followed up on the matter with the deceased until the 1990s, when he visited the deceased's place of work and was informed that he had been transferred to a place that was not disclosed to him.
5. The 1<sup>st</sup> Defendant averred that he subsequently got someone interested in purchasing one of the properties. The 1<sup>st</sup> Defendant averred that when the person conducted a search on the suit properties, he found that both were registered in the name of the deceased. The 1<sup>st</sup> Defendant averred that he filed a suit against the deceased in 2007 for the recovery of the suit properties, which suit was not prosecuted to conclusion due to the death of the advocate who was handling the matter on his behalf. The 1<sup>st</sup> Defendant averred that he was shocked to learn from the pleadings filed by the Plaintiffs that the deceased died in 1995. The 1<sup>st</sup> Defendant averred that he was also surprised to learn upon further investigations that his name had been cancelled in the adjudication records in respect of the two properties and replaced with the name of the deceased as the owner of the properties following the outcome of an alleged Committee Case No. 52 of 1981. The 1<sup>st</sup> Defendant denied knowledge of the Committee Case.
6. The 1<sup>st</sup> Defendant averred that he was not aware of the death of the deceased and the existence of the administrators of his estate. The 1<sup>st</sup> Defendant averred that since the whereabouts of the deceased was unknown, he managed to persuade the Land Registrar, Kisumu, through continuous nagging, to enter his name in the register of the suit property as the owner thereof in the hope that the move would cause the deceased to resurface. The 1<sup>st</sup> Defendant averred that for over 50 years, he had been the one occupying and using the two properties, and no one had come forward to lay a claim over the same. The 1<sup>st</sup> Defendant reiterated that the two properties were his ancestral land. The 1<sup>st</sup> Defendant admitted that he sold the land parcel, East Kisumu/Kanyakwar B/128, to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The 1<sup>st</sup> Defendant averred that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had taken possession of the land parcel, East Kisumu/Kanyakwar B/128, and were operating a business thereon. The 1<sup>st</sup> Defendant averred that the Plaintiffs, who had not occupied the suit property for over 40 years since the same was fraudulently registered in the name of the deceased, would not suffer irreparable harm if the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants remained in occupation pending the hearing of the suit.
7. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants swore a joint undated affidavit in opposition to the application. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that they were a husband and wife and were the registered owners of the land parcel, East Kisumu/Kanyakwar B/128 (the suit property), which they acquired from the 1<sup>st</sup> Defendant in August 2024 at a consideration of Kshs. 2,000,000/-. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that when



they acquired the suit property, the same was registered in the name of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that after the property was transferred to them, they fenced the same and opened a motor vehicle garage business thereon. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that it was after the filing of this suit that they learnt that the name of the 1<sup>st</sup> Defendant was just “inserted” in the register of the suit property by the Land Registrar as the owner thereof to make the deceased appear and present himself to the Land Registrar and explain how he acquired the land. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that they would be highly prejudiced if they were ordered to vacate the suit property on which they were operating a business. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that since the Plaintiffs had not been using the suit property for over 40 years, they would not suffer any loss if the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants remained in occupation of the property pending the hearing of the suit.

8. The application was argued through written submissions. The Plaintiffs filed submissions dated 14<sup>th</sup> March 2025. The Plaintiffs submitted that the 1<sup>st</sup> Defendant’s contention that the suit property was acquired fraudulently by the deceased was not supported by the evidence on record, as was the 1<sup>st</sup> Defendant’s claim that his name was just inserted in the register of the suit property by the Land Registrar to make the deceased resurface. The Plaintiffs submitted that the evidence on record showed that the 1<sup>st</sup> Defendant acquired the suit property from Teresia Waithira Mucheke Mwangi, who had acquired the same by transmission through Succession Cause No. 580 of 2008. The Plaintiffs submitted that the said Teresia Waithira Mucheke Mwangi was unknown to them and that they were not privy to the alleged succession cause. The Plaintiffs wondered how the 1<sup>st</sup> Defendant, who claimed that the suit property was his ancestral land, could have also acquired the property from Teresia Waithira Mucheke. The Plaintiffs submitted that even if the property was transferred to the 1<sup>st</sup> Defendant by the 4<sup>th</sup> Defendant following frequent nagging, as claimed by the 1<sup>st</sup> Defendant, nagging is not a legal basis for transferring an interest in land. The Plaintiffs submitted that they had established a prima facie case with a probability of success against the Defendants. The Plaintiffs submitted that the business operated by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the suit property would require further development to be undertaken on the property, which would change the character of the property before the hearing of the main suit. The Plaintiffs submitted that if this happened, they would suffer irreparable harm. The Plaintiffs urged the court to grant the orders sought to preserve the suit property pending the hearing of the suit.
9. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants (Defendants) filed joint submissions dated 24<sup>th</sup> March 2025. In their submissions, the Defendants admitted that the Plaintiffs had established a prima facie case with a probability of success. The Defendants submitted that the Plaintiffs had, however, not demonstrated that they would suffer irreparable harm that could not be compensated in damages if the orders sought were not granted and they succeeded at the trial of the suit. The Defendants submitted that even the balance of convenience did not favour the granting of the orders sought by the Plaintiffs. The Defendants submitted that they had no objection to the court preserving the suit property by stopping any dealings with the property. The Defendants, however, objected to the order seeking to bar the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from continuing to use the suit property. The Defendants submitted that the Plaintiffs who had never occupied or used the suit property since the same was registered in the name of the deceased in 1983, over 40 years ago, would not suffer any loss that could not be compensated in damages if the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants continued to use the suit property pending the hearing of the suit or for at least 1½ more years to enable them look for an alternative premises for their business.

### **Analysis and Determination**

10. I have considered the Plaintiffs’ application together with the affidavit filed in support thereof. I have also considered the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants’ affidavits filed in reply to the application. Finally, I



have considered the submissions by the advocates for the parties together with the authorities cited in support thereof.

11. The principles applied by the court in applications for interlocutory injunction are settled. In *Giella v. Cassman Brown & Co. Ltd.* [1973] E.A 358, it was held that an applicant for a temporary injunction must show a prima facie case with a probability of success, and such an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which cannot be adequately compensated by an award of damages. It was held further that if the court is in doubt as to the foregoing, the application would be determined on a balance of convenience.
12. In *Nguruman Limited v. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal adopted the definition of a prima facie case that was given in *Mrao Limited v. First American Bank of Kenya Limited & 2 Others* [2003] KLR 125 and went further to state as follows:

“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 and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion...All that the court is to see is that on the face of it the person applying for an injunction has a right which has been threatened with violation...The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it, the applicant’s case is more likely than not to ultimately succeed.”

13. I am persuaded that the Plaintiffs have established a prima facie case against the Defendants with a probability of success. This fact has been admitted by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in their submissions. The Plaintiffs have established that the deceased was at all material times the registered proprietor of the suit property. The Plaintiffs have produced evidence showing that the deceased died on 10<sup>th</sup> January 1995 and that a grant of letters of administration in respect of the deceased’s estate was issued to the Plaintiffs on 14<sup>th</sup> May 2007 and confirmed on 21<sup>st</sup> September 2010. The Plaintiffs have demonstrated that the suit property remained registered in the name of the deceased until 19<sup>th</sup> June 2024, when the same was registered in the name of Teresia Waithira Muccheke Mwangi through a purported Succession Cause No. 580 of 2008, and on the same day, transferred and registered in the name of the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant has not commented on the purported succession cause. In fact, according to the 1<sup>st</sup> Defendant, his name was just inserted by the 4<sup>th</sup> Defendant in the register of the suit property to make the deceased resurface and appear before the Land Registrar. The 1<sup>st</sup> Defendant has not claimed that he acquired the suit property from Teresia Waithira Muccheke Mwangi or that he was privy to the said succession cause. I am persuaded that the Plaintiffs have established on a prima facie basis that they are the lawful administrators of the estate of the deceased and that neither the deceased nor the Plaintiffs transferred the suit property to the 1<sup>st</sup> Defendant. I am satisfied that a prima facie case of illegality and fraud in the transfer of the suit property from the deceased to the 1<sup>st</sup> Defendant has been established. The said illegality and fraud affect the title held by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. If the 1<sup>st</sup> Defendant had no valid title in the suit property, he could not pass any to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
14. On whether the Plaintiffs would suffer irreparable harm if the orders sought are not granted, I am satisfied that that would be the case. The suit property is registered in the name of the 2<sup>nd</sup> and 3<sup>rd</sup>



Defendants. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants can deal with the property in any manner they wish, including selling or charging the property, unless restrained by the court. If the suit property is sold while the suit is pending, the action would create new disputes between the Plaintiffs and third parties, if the Plaintiffs succeed at the trial, which would subject the Plaintiffs to further costs, loss of use of the property, and inconvenience. The kind of loss likely to be suffered by the Plaintiffs would be irreparable. It is also common ground that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are operating a motor vehicle repair business on the suit property. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have admitted that the suit property was covered with bush when they took possession. I agree with the Plaintiffs that the continued use of the suit property by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants would negatively change the character of the property in a manner that cannot be compensated in damages should the Plaintiffs succeed at the trial.

## **Conclusion**

15. In conclusion, I find merit in the Notice of Motion application dated 11<sup>th</sup> February 2025. The Plaintiffs are entitled to all the orders sought, save for the order for the production of the parcel file, which cannot be granted at this stage. The application is allowed on the following terms;
1. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents, their agents, servants, employees, or any other person acting on their behalf, are restrained from continuing with any construction, development, or any other activity on the parcel of land known as East Kisumu/Kanyakwar B/128 pending the hearing and determination of this suit.
  2. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents, whether by themselves, their agents, servants, representatives, or any other person acting on their behalf, are restrained from selling, transferring, leasing, charging, or in any way disposing of the parcel of land known as East Kisumu/Kanyakwar B/128 pending the hearing and determination of this suit.
  3. The 4<sup>th</sup> Defendant shall register an inhibition against the title of the parcel of land known as East Kisumu/Kanyakwar B/128, inhibiting the registration of any other or further dealings with the property pending the hearing and determination of this suit.
  4. The order granted in number one (1) above is suspended until 31<sup>st</sup> December 2025 to give the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants time to move out of the parcel of land known as East Kisumu/Kanyakwar B/128.
  5. The costs of the application shall be in the cause.

**DELIVERED AND SIGNED AT KISUMU ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025**

**S. OKONG'O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Okinyo for the Plaintiffs

Ms. Okumu for the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants

N/A for the 4<sup>th</sup> Defendant

Ms. J.Omondi-Court Assistant

