

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KAKAMEGA**  
**ELC CASE NO. E050 OF 2025 (OS)**

**ALI AMIN ERIMA..... PLAINTIFF**

**VERSUS**

**CHRYSANDUS            JUMA            MULUNGA.....**  
**DEFENDANT**

**RULING**

**Introduction**

1. Before court is a Notice of Motion dated 3<sup>rd</sup> September 2025 filed by the plaintiff seeking the following orders;

**a) Spent**

**b) Spent**

**c) Spent**

**d) That pending the hearing and determination of this suit an inhibition order be issued restraining any dealings on LR NO. N.**

**Wanga/Kholera/5222 and or to any created parcel of land therefrom.**

**e) That pending the hearing and determination of this suit, the defendant, his agent, nominees, servants be restrained from trespassing and or interfering with the plaintiff's peaceful occupation of one acre of land where he stays with his family out LR NO. N. Wanga/Kholera/5222.**

**f) Costs be provided for by the defendant.**

2. The application is anchored on the supporting affidavit sworn by the applicant dated 3<sup>rd</sup> September 2025. The applicant's case is that he is in occupation of one acre from parcel LR NO. N. Wanga/Kholera/5222 (suit property) where he has been for over 40 years. That his portion is clearly demarcated on the ground. That the defendant was seen with a private surveyor on the land on 30/08/2025 carrying unknown survey exercise. That the defendant was with strangers who were purporting to be buyers of the suit property. That the defendant may subdivide and sell the suit property which will make it costly and difficult to revert new numbers created to the

old number. That the applicant will suffer irreparable harm if orders sought are not granted.

3. The application was opposed. Chrysandus Juma Mulunga filed a replying affidavit dated 3<sup>rd</sup> September 2025 opposing the application. He stated that the applicant was guilty of nondisclosure of material facts and was misleading the court. That the applicant's father Erima Okwenya purchased 2 acres from the respondent's father Mulunga Mabonga at a consideration of Kshs. 1, 100/= to be hived from parcel No. LR NO. N. Wanga/Kholera/590, but that the purchaser failed to complete payment of the consideration and in 1989, they entered into a new agreement. That the one acre sold to the applicant's father had no access road. That in 2010, the applicant filed Claim No. 9 of 2010 in the Land Disputes Tribunal at Mumias, which claim was dismissed. That in 2014, he filed a succession cause Kakamega P&A Cause No. 432 of 2014 and no objection was lodged. That thereafter parcel LR NO. N. Wanga/Kholera/5222 measuring 1.493 hectares was registered in his name.

4. That he was surprised to receive summons from the Assistant County Commissioner (ACC) Matungu Division in respect of which the applicant was claiming one acre and an access road. That the ACC ordered that a new agreement be entered into between the parties herein but that the applicant failed to attend the meeting. That the respondent was surprised to receive summons from this court yet it is the applicant that is uncooperative. That he was only an administrator to the deceased's estate and not responsible for the access road. That the applicant has been adamant to agree to the terms of the new agreement. That his occupation on the suit property is not adverse but an illegal encroachment and by fraud. That since the applicant has abused his generosity, the court should issue an order restraining the applicant from interfering with the suit property.

5. He attached a sale agreement made in 1989, proceedings of the Land Disputes Tribunal, succession proceedings, title, summons, and minutes.

6. Parties filed submissions which the court has duly considered

## **Analysis and determination**

7. The court has carefully considered the application and the response as well as the submissions filed. The sole issue that arises for the court's determination is whether the applicant has met the threshold for grant of orders of inhibition and temporary injunction.
8. Section 68 of the Land Registration Act provides for the power of the court to grant inhibition as follows;

**The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.**

9. The power of this court to grant injunction is provided for in Order 40 Rule 1 of the Civil Procedure Rules as follows;

## **Cases in which temporary injunction may be granted**

**[Order 40, rule 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; or**
  
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,**

**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.**

10. Principles for grant of injunction are well settled.

The applicant must demonstrate a *prima facie* case with chances of success, irreparable injury and show that the balance of convenience tilts in favour of granting an

injunction. (See **Giella v Cassman Brown [1973] EA 358**)

11. The court having considered the instant application, it is clear that the parties herein agreed in 1989 on sale of one acre of land from the suit property to the applicant's father. The fact that the applicant has had a home on the suit property from that time to date is conceded by the respondent who stated as much before that Land Disputes Tribunal.

12. In view of the fact that the applicant's allegation that he has been on the suit property since 1989 to date has not been contested by the respondent, I am therefore persuaded that the applicant has demonstrated *a prima facie* case with chances of success. The applicant having a home on the property and the respondent having title thereto the land is at risk of being subdivided and sold to 3<sup>rd</sup> parties, an allegation the respondent did not contest. Hence, I find and hold that the applicant stands to suffer irreparable harm if injunction and inhibition are not granted. On the issue of the balance of convenience, as the applicant is in possession and the respondent having

confirmed that, it is my view that the balance of convenience tilts in favour of granting the orders sought. In the premises, I allow the application and order as follows;

- a) That pending the hearing and determination of this suit an inhibition order is hereby issued restraining any dealings on LR NO. N. Wanga/Kholera/5222 and or to any created parcel of land therefrom.**
- b) That pending the hearing and determination of this suit, the defendant, his agent, nominees, servants be restrained from trespassing and or interfering with the plaintiff's peaceful occupation of one acre of land where he stays with his family out LR NO. N. Wanga/Kholera/5222.**
- c) Costs of the application shall be borne by the defendant.**

13. It is so ordered

**DATED, SIGNED AND DELIVERED AT KAKAMEGA  
IN OPEN COURT/VIRTUALLY THROUGH  
MICROSOFT TEAMS VIDEO CONFERENCING  
PLATFORM THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025**

**A. NYUKURI**  
**JUDGE**

**In the presence of;**

Mr. Wamalwa for the applicant/plaintiff

The defendant/ respondent in person

Court Assistant: Delphine