

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC CASE NO. E162 OF 2025**

**ISAAK KAARA GICHENGO .....**  
**PLAINTIFF**

**VERSUS**

**JAMES KIGATHI NDEGWA ..... 1<sup>ST</sup>**  
**DEFENDANT**

**LAND REGISTRAR, KIAMBU COUNTY ..... 2<sup>ND</sup>**  
**DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**R U L I N G**

1. The Plaintiffs herein filed a Notice of Motion dated 7<sup>th</sup> August 2025 seeking the following orders:

*i). Spent*

*ii). Spent*

*iii). That pending hearing and determination of this instant application this Honorable Court be pleased to grant an order of prohibition prohibiting the 1<sup>st</sup> Defendant/Respondent and all persons claiming under him from trespassing, charging, alienating or disposing the interest in land parcel LARI/KIJABE/18 measuring approximately 3.66Acres until further orders of this court.*

*iv). That pending hearing and determination of the substantive suit herein Honorable Court be pleased to direct the Land Registrar, Kiambu County to register an*

*order of inhibition and/or prohibition against registration of any transfer, charge, lease or any dealings in land parcel number LARI/KIJABE/18 measuring approximately 3.66Acres, pending hearing and determination of this suit.*

*v). That the 1<sup>st</sup> Defendant/Respondent herein, his servants, agents and or anybody acting through him be restrained from trespassing, selling, sub-dividing, transferring, and or committing any act of waste in land parcel LARI/KIJABE/18 measuring approximately 3.66Acres, pending hearing and determination of this suit.*

*vi). That costs of this application be in the cause.*

2. The application is based on the grounds set out on the face of the Notice of Motion and the Supporting Affidavit of Isaak Kaara Gichiengo (Plaintiff/Applicant), sworn on the 7<sup>th</sup> August 2025. In the said Affidavit, she deposes that

3. He contends that in 2018 his mother, who is now 95 years old, was diagnosed with dementia, prompting the family to convene and agree that their ancestral land, LARI/KIJABE/18 (hereinafter referred to as the “suit property”), be transmitted from his late father’s name to his own through Limuru SPMC Succession Cause No. 211 of 2018. He contends that he received the title deed on 2<sup>nd</sup> March 2021 and understands that he holds it in trust for his family, especially his mother, whose house is on the property.

4. He explains that in 2022, he relocated to Kenya from the USA after an acrimonious divorce following 27 years of marriage, which resulted in the freezing of his bank accounts in the USA and the loss of his job. He states that upon returning to Kenya, he became mentally unwell and was diagnosed with Major Depressive Disorder and Hypertension, after which he began psychiatric treatment at Chiromo Lane Medical Centre.
5. He avers that around July 2023, a court in the USA declined his doctor's request that he attend proceedings virtually, forcing him to plan to travel to the USA, though he was financially strained at the time. He states that he contacted an acquaintance who introduced him to the 1<sup>st</sup> Defendant/Respondent, a shylock, and they agreed that he would borrow Kshs. 250,000 from the 1<sup>st</sup> Defendant/Respondent, repayable within 90 days, together with Kshs. 100,000 in interest. He deposes that they signed an agreement dated 27.07.2023, and that he gave the title deed of the suit property as security. He asserts that the 1<sup>st</sup> Defendant's advocate drafted the agreement and admits he did not read it, relying instead on their oral agreement that the 1<sup>st</sup> Defendant/Respondent would hold the title deed only until repayment.
6. He further states that upon execution of the agreement, he handed over the title deed for the suit property valued at about Kshs. 30,000,000, to the 1<sup>st</sup> Defendant as security. It is his position that

before expiry of the repayment period, he attempted to reach the 1<sup>st</sup> Defendant to renegotiate repayment terms, but the 1<sup>st</sup> Defendant neither picked up his calls nor responded to his messages. He adds that his attempts to contact the 1<sup>st</sup> Defendant's associate, Mr. Felix Wambua, are also unfruitful except for a single text message on 2<sup>nd</sup> November 2023 promising to return the call.

7. He depones that the efforts to reach the 1<sup>st</sup> Defendant become futile, and since he is still trying to settle his family and financial issues, he assumes that they would eventually contact him. He explains that on 29<sup>th</sup> April 2025, auctioneers, accompanied by guards, go to the suit property seeking to evict him and his family, claiming that the land has been transferred to the 1<sup>st</sup> Defendant, who is now the new owner. He contends that an official search reveals that the 1<sup>st</sup> Defendant obtained a title deed over the suit property on 31<sup>st</sup> October 2023, which is barely three days after the repayment period lapsed.

8. He further contends that the suit property is valued at over Kshs. 30,000,000 hence it is unconscionable, oppressive and exploitative for the 1<sup>st</sup> Defendant/Applicant to purport to take over the land as compensation for a loan of Kshs. 350,000. He states that he did not obtain any Land Control Board consent for the transfer, and therefore any purported consent presented at the Land Registry must be forged or fraudulently obtained. He states that his advocate has explained the clauses of the 27.07.2023 agreement to him, and

he now believes that the 1<sup>st</sup> Defendant and his associates, including the advocate, took advantage of his vulnerable situation and drafted the agreement with a premeditated intention to acquire the land. He maintains that the suit land is family land where his 95-year-old mother resides and wishes to be buried, and that family graves are located on the property. He adds that disposing of the land would prejudice his interests and violate customary trust and family land rights.

9. He avers that after transferring the land to himself, the 1<sup>st</sup> Defendant obtained an ex parte eviction order in Limuru SPMC MCELC/E037/2024. He further avers that although the eviction orders are now stayed, he is concerned because the subordinate court lacks pecuniary jurisdiction to entertain the matter. He deposes that the 1<sup>st</sup> Defendant has remained defiant and has sent goons to subdivide the land forcibly, and he fears that the 1<sup>st</sup> Defendant/Applicant may deal with the property in a manner prejudicial to him and his family. He contends that the 1<sup>st</sup> Defendant's registration as proprietor of the suit property was obtained illegally and fraudulently through corrupt schemes. He states that it is in the interests of justice that the court grants the orders sought.
10. In opposing the Application, James Kigathi Ndegwa (1<sup>st</sup> Defendant/Respondent) filed a Replying Affidavit sworn on the 21<sup>st</sup> August 2025 denying the Plaintiff/Applicant's averments. He avers

that the Plaintiff/Applicant's claims concerning an alleged oral agreement, unread or misunderstood terms, and flexible repayment arrangements are false. He states that the Plaintiff/Applicant was allowed to review the written loan agreement dated 27<sup>th</sup> July 2023 and seek independent legal advice, and that he signed it voluntarily, thereby assuming the terms therein.

11. The 1<sup>st</sup> Defendant/Respondent denies the Plaintiff/Applicant's valuation of the suit property at Ksh 30,000,000. He confirms that a proper valuation was conducted by Crystal Valuers Limited, which established the market value at Ksh 6,500,000, accepted by both parties.
12. He further asserts that his exercise of rights over the property following the Plaintiff/Applicant's failure to repay the loan was lawful and contractual. He emphasizes that the transfer of the property to him was a legal consequence of the Plaintiff's default, carried out in compliance with the law, and that any allegation of forgery or unlawful conduct in obtaining Land Control Board consent is baseless. He denies that the property was occupied by the Plaintiff/Applicant's mother or anyone else, stating that it was vacant and that he lawfully took possession.
13. He also notes that the Senior Principal Magistrate set aside an ex parte judgment on 15<sup>th</sup> August 2025, but he applied for a review of that ruling on advice from his advocate because it was inconsistent

with the Honourable Court's orders of 12<sup>th</sup> August 2025. He denies claims that the lower court lacked pecuniary jurisdiction, asserting that the Plaintiff's inflated valuation was an attempt to mislead the court.

14. Finally, he concludes that granting the Plaintiff/Applicant's application would reward her breach of contract and prejudice his legitimate rights as the registered owner.
15. The application was canvassed by way of written submissions dated 9<sup>th</sup> October 2025 filed by the Plaintiff/Applicant.

#### **ANALYSIS AND DETERMINATION**

16. The only issue for determination is whether the Applicant has met the conditions for the grant of a temporary injunction set out in the case of **Giella vs Cassman Brown & Company Ltd 1973 EA 358**, which are as follows:

*"First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience."*

17. In the case of **Mrao V First American Bank of Kenya Limited (2003) eKLR** Bosire JA (as he then was) stated as follows:

*“A prima facie case is one 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.*

18. The first issue I have to determine is whether the Plaintiff/Applicant has established a *prima facie* case. The Plaintiff/Applicant contends that the transfer of the land to the 1<sup>st</sup> Defendant was obtained through exploitative and unconscionable means, taking advantage of his vulnerable state, and without compliance with the required Land Control Board procedures. He also contends that the property is family land, and the transfer violates customary and statutory protections.
19. Conversely, the 1<sup>st</sup> Defendant asserts that the transfer was lawful, arising from the Plaintiff's default under a valid loan agreement. He maintains that the Plaintiff voluntarily signed the agreement, that independent legal advice was available, and that Land Control Board procedures were duly followed.
20. At this stage, the Court is not required to resolve all factual disputes but to consider whether there is a serious question to be tried. In this case, there are conflicting accounts regarding the execution of the loan agreement, the valuation of the property, the Plaintiff/Applicant's mental and financial state at the time, and compliance with statutory transfer procedures. These disputes

satisfy the requirement that there is a triable issue before the Court, meaning the Plaintiff/Applicant has established a *prima facie* case.

21. On whether the Plaintiff/Applicant will suffer irreparable injury, he contends that if the injunction is not granted, the 1<sup>st</sup> Defendant may deal with the property in a manner prejudicial to him and his family, potentially leading to eviction, subdivision, or sale. The Plaintiff/Applicant emphasizes that the property is family land, where his elderly mother resides, and contains family graves, which cannot be adequately compensated by damages. In response, the 1<sup>st</sup> Defendant argues that he lawfully acquired the property and that no irreparable harm would result, as he is entitled to exercise rights over the property following lawful default.
22. Given that family land carries special protection under Kenyan law and that eviction or disposal of the land would result in harm that cannot be easily quantified in monetary terms, the Court finds that the Plaintiff/Applicant has made a credible case for potential irreparable injury.
23. On balance of convenience, the Court must weigh the harm to the Plaintiff/Applicant if the injunction is not granted against the inconvenience to the 1<sup>st</sup> Defendant/Respondent if it is granted. The 1<sup>st</sup> Defendant will be temporarily restrained from exercising rights over the property, which he contends are lawful. However, the risk of causing irreparable harm to the Plaintiff/Applicant and his family,

including the disruption of family life and loss of family graves, outweighs the temporary inconvenience to the 1<sup>st</sup> Defendant, who retains other remedies under the law to protect his interests pending determination of the substantive suit. In addition, Section 68(1) of the Land Registration Act gives the court power to issue an inhibition for the purpose of preventing any fraud or improper dealing with the land.

24. In light of the foregoing, the Court finds that the Plaintiff/Applicant has satisfied the conditions for granting a temporary injunction. The Court therefore orders as follows:

- i). ***Pending the hearing and determination of the substantive suit, the 1<sup>st</sup> Defendant, his agents, and all persons claiming under him are prohibited from trespassing, charging, alienating, transferring, or disposing of any interest in land parcel LARI/KIJABE/18 measuring approximately 3.66 Acres.***
- ii). ***The 2<sup>nd</sup> Defendant, the Land Registrar, Kiambu County, is directed to register an order of inhibition and/or prohibition against registration of any transfer, charge, lease, or any dealings in land parcel number LARI/KIJABE/18, pending the hearing and determination of this suit.***
- iii). ***The 1<sup>st</sup> Defendant and his agents are restrained from subdividing, transferring, or committing any act of waste on the suit property pending the***

***hearing and determination of the substantive suit.***

iv). ***Costs of this application shall be in the cause.***

**Dated, signed and delivered virtually this 19<sup>th</sup> day of November 2025.**

.....  
**J. M ONYANGO**  
**JUDGE**

**In the presence of:**

1. Mr Omondi for the Plaintiff/Applicant
2. Mr Owala for the 1st Defendant/Respondent

Court Assistant