

**REPUBLIC OF KENYA**

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

**ELCL CASE NO. 128 OF 2025**

ENOW        ISSAK        LIBAN.....  
....PLAINTIFF

-VERSUS-

ESTHER NYAMBURA MAINKO

DANIEL LANTEI MAINKO (vendors and administrators -

Of the estate of JEREMIAH MAINKO KIDIENYE (deceased)...1<sup>st</sup>  
DEFENDANT

EDWARD        NJOROGE        .....2<sup>ND</sup>  
DEFENDANT

**RULING**

***(On whether the interim orders issued ex parte in this matter should be extended pending the hearing and determination of the plaintiff's notice of motion dated 29<sup>th</sup> September 2025)***

**Introduction.**

1. The plaintiff commenced this suit by way of the plaint dated 29<sup>th</sup> September 2025. Alongside the plaint, the plaintiff filed a motion of even date under certificate of urgency seeking an order of temporary injunction restraining the defendants/respondents by themselves, their agents and or any other person acting in their

names, and or on their behalf from entering, trespassing, damaging, alienating, building/erecting structures, cultivating, subdividing, selling, wasting, damaging or in any other manner dealing with the parcel of land known as Kjd/Kitengela/19745 pending the hearing and determination of the application.

2. The plaintiff further sought for an order directed at the Land Registrar - Kajiado to place a restriction over the title of the subject parcel of land pending hearing of the application.
3. The urgency of the application was explained in the certificate dated 29<sup>th</sup> September 2025 signed by Orlando M. Briton, the Advocate for the plaintiff/applicant.
4. Upon the court considering the certificate ex parte on 3<sup>rd</sup> October 2025, it issued a temporary injunction order with a view to preserving the subject matter awaiting inter partes hearing which was set down for the 29<sup>th</sup> October 2025.
5. On the 29<sup>th</sup> October 2025, the Advocate for the plaintiff, Mr. Orlando informed the court that he had been served with a lengthy response by the 2<sup>nd</sup> defendant/respondent alongside an application dated 27<sup>th</sup> October 2025. He sought for time to file a further affidavit in response to the new issues raised in the

response by the 2<sup>nd</sup> defendant/respondent as well as reply to the application dated 27<sup>th</sup> October 2025 by the 2<sup>nd</sup> defendant/respondent. He sought for 21 days and an extension of the interim orders granted on 3<sup>rd</sup> October 2025 awaiting the determination of the application.

6. The 1<sup>st</sup> defendant/respondent on his part sought 14 days to reply to both applications by the plaintiff and the 2<sup>nd</sup> defendant.
7. On his part, the 2<sup>nd</sup> defendant through his advocate, Mr. Ng'ang'a while not in principle opposed to the granting of time to the plaintiff to file the supplementary affidavit and reply to his application, vehemently opposed the extension of the interim orders. In his opposition, the 2<sup>nd</sup> defendant went into great details explaining the history of the dispute between him and the 1<sup>st</sup> defendant and by extension the plaintiff. He particularly submitted that the plaintiff was guilty of failure to disclose that there was a judgment in favour of the 2<sup>nd</sup> defendant by a court of concurrent jurisdiction in Kajiado ELC 64 of 2020 (Esther N. Mainko -vs- Edward Njoroge & 2 others) in respect of the same subject matter of this suit. He further explained that the plaintiff had also filed a suit before the Kajiado Chief Magistrate's Court in

respect to the subject matter of this suit which had been dismissed.

8. The plaintiff's advocate responded in kind insisting that his client was not a party in Kajiado ELC 64 OF 2020. He was therefore entitled to have his day in court. The plaintiff, as submitted by Mr. Orlando was the registered proprietor of the suit property.
9. The argument by both sides went into the merits of the pending applications. I will refrain from going into the depths of the arguments in order not to prejudice any side before hearing and considering the two pending applications on the merits.
10. One issue that is not in contention is that every party in this matter has the right to file a response to either of the applications. The plaintiff definitely has the right to respond to any new issues arising from the lengthy response by the 2<sup>nd</sup> defendant to his application dated 29<sup>th</sup> September 2025 and to respond to the 2<sup>nd</sup> defendant's application dated 27<sup>th</sup> October 2025 seeking to strike out his suit. Likewise, the 2<sup>nd</sup> defendant is entitled to corresponding leave to file a supplementary affidavit to any new issue that may arise from the response by the plaintiff.

The 1<sup>st</sup> defendant too being a party in this case is entitled an opportunity to express his position in regard to the applications.

11. The contention that necessitated the filing of this ruling is whether the interim orders granted ex parte should be extended pending the determination of the applications.
12. The object of an interlocutory injunction as explained by the Court of Appeal in the case of **Rockland Kenya Limited -vs- Elliot White Miller (1994) eKLR**, is to protect the plaintiff against injury by violation of his legal right for which he cannot adequately be compensated in damages recoverable in the action if the matter in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the plaintiff's undertaking in damages if the subject matter of the trial was decided in his favour.
13. What is before me is a rather unique case where the 2<sup>nd</sup> defendant has a judgment in his favour by a court of competent and concurrent jurisdiction whereas the plaintiff pleads that he

was not a party to the suit giving rise to the judgment in favour of the 2<sup>nd</sup> defendant. One of the critical issues that this court must determine is whether the plaintiff has a right to institute a fresh suit in view of the judgment in favour of the 2<sup>nd</sup> defendant over the same subject matter. That indeed is the substance of the 2<sup>nd</sup> defendant's application dated 27<sup>th</sup> October 2025. The court prior to making the determination must afford each party an opportunity to present his or her arguments. The wheels of justice turn slowly but grind exceedingly fine.

14. Awaiting the determination on that weighty issue, the court has responsibility to keep things in status quo, till that question is determined. The court in doing so must carry out the delicate balancing act as explained in the Rockland Kenya Limited case (supra).

15. The court in Kajiado ELC 64 of 2020 in determining the case in favour of the 2<sup>nd</sup> defendant ostensibly made a finding that the 2<sup>nd</sup> defendant was in continuous uninterrupted possession of the suit property. That is one of the key ingredients for a finding in favour of adverse possession.

16. This court is obligated under the provisions of the evidence Act to take cognizance of judgments by other competent courts of law. With that in mind, this court will endeavour to preserve the title of the suit property without interrupting the status quo as established and determined by the court of concurrent jurisdiction in Kajiado ELC No. 64 of 2020. The interim orders issued on 29<sup>th</sup> September 2025 shall be extended but varied as follows;

***“That a temporary injunction order be and is hereby issued restraining the defendants by themselves, their agents and or any other person acting in their names, and or on their behalf from alienating, subdividing, selling, charging or in any other such manner dealing with the parcel of land known as Kajiado/Kitengela/19745 pending the hearing and determination of the plaintiff’s application dated 29<sup>th</sup> September 2025 and the 2<sup>nd</sup> defendant’s application dated 27<sup>th</sup> October 2025.”***

17. That said, the court proceeds to give the following directions;

- (a) The 1<sup>st</sup> defendant is granted leave of seven (7) days from the date of this ruling to respond to both the plaintiff's and the 2<sup>nd</sup> defendant's applications dated 29<sup>th</sup> September 2025 and 27<sup>th</sup> October 2025 respectively.
- (b) The plaintiff has leave to file a supplementary affidavit in response to any new issues raised in the replying affidavit of the 2<sup>nd</sup> defendant and a replying affidavit to the 2<sup>nd</sup> defendant's application dated 27<sup>th</sup> October 2025 in fourteen (14) days from the date of this ruling.
- (c) The 2<sup>nd</sup> defendant will have corresponding leave to file and serve a supplementary affidavit in response to any new raised in the plaintiff's and 1<sup>st</sup> defendants' replying affidavits, if need be, in fourteen (14) days after service.
- (d) Time shall be of essence.
- (e) The two applications shall be heard orally and concurrently on 16<sup>th</sup> December 2025.
- (f) The parties shall file and serve the authorities they wish to rely on in support of their oral submissions at least three (3) days before the hearing date.

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 4<sup>th</sup> Day  
of November 2025.**

**M.D. MWANGI  
JUDGE**

**In the virtual presence of:**

Mr. Orlando for the Plaintiff

Ms. Mphande h/b for Mr. Macharia for the 1<sup>st</sup> Defendant

Mr. Isahi alongside Mr. Ng'ang'a for the 2<sup>nd</sup> Defendant

Court Assistant: Mpoye

**M.D. MWANGI  
JUDGE**