

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCLC No. E022 OF 2024

WILLIAM ACHOKI NYAMBIYA
PLAINTIFF

VERSUS

MINISTRY OF LAND, HOUSING AND
URBAN DEVELOPMENT 1ST
DEFENDANT

PRISCA GETONTO
2ND DEFENDANT

RICHARD GETONTO
3RD DEFENDANT

JOSEPH ONDEYO
4TH DEFENDANT

RULING

1. The Plaintiff moved the court through Plaintiff dated 17th December 2024. He averred therein that he is the beneficial owner and in possession of the parcels of land known as West Mugirango Bomanono 169, 170, 171 and 172 (the suit properties) which originally belonged to his grandfather and which his father inherited. He added that succession had not been completed and that he is therefore a beneficial owner and that he had constructed a house on West Mugirango Bomanono 170, 171 and 172 which he had used as his home for over 30 years.

2. The Plaintiff further averred that there had been a boundary dispute with some of his relatives who seek the suit properties. That the First Defendant wrote a letter dated 26th November 2024 summoning him and the Defendants to appear before it failure to which there would be rectification of the register under Section 79 of the Land Registration Act. That the First Defendant's actions were arbitrary and unconstitutional.
3. The Plaintiff therefore sought judgment for the following:
 - a. *A permanent injunction restraining the Defendants, their agents, servants, and/or employees from interfering with the Plaintiffs peaceful enjoyment and occupation of the parcels of land known as West Mugirango Bomanono 169, 170, 171, and 172.*
 - b. *An order compelling the 1st Defendant to avail the original records of the said parcels of land.*
 - c. *A declaration that the Plaintiff is the rightful and beneficial owner of the parcels of land known as West Mugirango Bomanono 169, 170, 171, and 172.*
 - d. *An order permanently stopping the process initiated by the 1st Defendant to rectify the register under Section 79 of the Land Registration Act, 2012.*
 - e. *Costs of this suit.*

f. Any other relief that this Honourable Court may deem fit to grant.

4. Simultaneously with the Plaint, the Plaintiff filed Notice of Motion dated 17th December 2024, which is the subject of this ruling. The following orders are sought in the application:

1. THAT pending the hearing and determination of this application inter partes, a temporary injunction be issued restraining the Defendants, their agents, servants, and/or employees from interfering with the Plaintiff's peaceful enjoyment and occupation of the parcels of land known as West Mugirango Bomanono 169, 170, 171, and 172.

2. THAT pending the hearing and determination of this suit, a temporary injunction be issued restraining the Defendants, their agents, servants, and/or employees from interfering with the Plaintiff's peaceful enjoyment and occupation of the parcels of land known as West Mugirango Bomanono 169, 170, 171, and 172.

3. THAT an order be issued compelling the 1st Defendant to avail the original records of the said parcels of land.

4. THAT pending the hearing and determination of this suit, an order be issued staying the process initiated by the 1st Defendant to rectify the register under Section 79 of the Land Registration Act, 2012.

5. THAT the costs of this application be provided for.

5. The application was initially filed without any supporting affidavit. Later, on 16th January 2025, the Plaintiff filed a supporting affidavit which he swore on 17th December 2024. The contents of the affidavit are essentially a rehash of the Plaintiff.
6. State Counsel appearing for the First Defendant indicated to the court that the application did not affect the First Defendant and for that reason the said defendant would neither file a replying affidavit nor submissions.
7. The Second to Fourth Defendants opposed the application through a replying affidavit sworn by the Fourth Defendant on 3rd February 2025 and two replying affidavits sworn by the second and Third Defendants on 12th May 2025. The contents of the three replying affidavits are essentially the same. They deposed that their great grandfather who was also great grandfather to the Plaintiff's father had five wives to whom he gave the suit properties together with another parcel. That the wives shared the parcels to their children as was directed by the grandfather.
8. They also deposed that the great grandfather's second wife who had one son by the name Obaga who was the Plaintiff's grandfather was allocated parcel number West Mugirango/Bomanono/169 and that the Plaintiff is therefore entitled to the said parcel. They added that the Plaintiff is claiming the other parcels which neither belonged to his

grandfather nor formed part of the land he is entitled to and that he had encroached on and built a house on each.

9. The Second to Fourth Defendants also deposed that they had been in active use of parcel numbers West Mugirango Bomanono 170, 171 and 172 despite hostilities from the Plaintiff and that the Plaintiff demolished their houses. They added that there had been several summonses by the First Defendant in unsuccessful attempts to resolve the boundary dispute and that none of the suit properties is registered in the name of the Plaintiff's father or grandfather.
10. The application was canvassed through written submissions. The Plaintiff filed submissions dated 17th June 2025 while the Second to Fourth Defendants filed submissions dated 10th June 2025.
11. I have carefully considered the application, the affidavits and the submissions. The issues that arise for determination are whether the Plaintiff has met the test for granting an interlocutory injunction and whether the orders sought should issue.
12. The principles applicable while considering an application for an interlocutory injunction are that the applicant must establish a *prima facie* case with a probability of success. Even if he succeeds on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to whether damages will be an adequate

compensation then the court will determine the matter on a balance of convenience. All these conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicant is expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See **Giella -vs- Cassman Brown & Co Ltd [1973] EA 358** and **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**.

13. The Plaintiff concedes that he is not registered proprietor of the suit properties. He pegs his claim to the properties on inheritance from his grandfather and his father. At the same time he concedes that there has been no succession in respect of the estates. In other words, his claim to the properties is yet to receive the approval of any succession court.
14. The Plaintiff did not annex any copy of title document or certificate of search in respect of the suit properties. On the other hand, the Second to Fourth Defendants annexed copies of certificates of search in respect of all the suit properties, a perusal of which shows that the Plaintiff is not the registered proprietor of any of them.
15. To the extent that he is not the registered proprietor of any of the suit properties and his claim to the properties is yet to receive the approval of any succession court, he is far from staking any tangible claim on the suit properties. I find that the Plaintiff has not established a *prima facie* case. In those

circumstances, I need not enquire into the other limbs of the test in **Giella -vs- Cassman Brown**.

16. In view of the foregoing, I find no merit in Notice of Motion dated 17th December 2024. I dismiss it with costs to the Second to Fourth Defendants.

Dated, signed, and delivered at Nyamira, this 19th day of November 2025.

**D. O. OHUNGO
JUDGE**

Delivered in the presence of:

Ms Kerubo for the Plaintiff

No Appearance by the First Defendant

No Appearance by for the Second to Fourth Defendants

Court Assistant: B Kerubo