

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC L OS E053 OF 2025

WILFRED GAKUYA WAWERU ALIAS

WILFRED WAWERU GAKUYA

Suing as the Legal Representative of the Estate of the Late

JEMIMAH NYAMBURA GAKUYA

PLAINTIFF

VERSUS

GEORGE WACHIRA KANYONI 1ST

DEFENDANT

JORETH COMPANY LIMITED 2ND

DEFENDANT

FAULU MICRO FINANCE 3RD

DEFENDANT

CHIEF LAND REGISTRAR 4TH

DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 5TH

DEFENDANT

ELC L OS E053 OF 2025

Ruling

RULING

1. What is before the Court for determination is the Plaintiff's Notice of Motion application dated the 28th August 2025 where he seeks the following Orders:

a) Spent.

b) Spent.

c) That this Honourable Court be pleased to issue an order of temporary injunction restraining the 1st -3rd Defendants, their servants, agents and /or all those acting under their instructions from trespassing on, transferring, wasting, erecting, damping , developing and/or adversely interfering with the suit property known as Plot NO. 617 Thome Farmers No. 5 Limited alias LR 13330/373 converted to Nairobi Block 245/237 situated along Thika Road pending the hearing and determination of the substantive suit.

d) That the costs of this Application be provided for.

2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that his late mother (Jemimah Nyambura Gakuya) was a bonafide shareholder of Thome Farmers No.5 Limited by virtue of Share Certificate No. 980 (1) share and the allottee of **Plot No. 617** alias **LR 13330/373** converted to **Nairobi/Block 245/237**, hereinafter referred to as the 'suit plot'. He claims that the plot was bequeathed to his mother by his late father Gakuya Waweru who was an original shareholder in Thome Farmers No. 5 Limited and the allottee of the suit plot, which was allotted to him in the year 1987. Further, that his late mother was in possession of the suit plot and in 1997, she opted to lease it out to Mr. Francis Muriuki Elijah who converted the said property to a motor vehicle showroom under the name and style of Shineland Motors where he connected water, electricity as well as constructed a permanent perimeter fence around it and remained in tenancy until July 2024 when he was evicted for non- payment of rent. He states that the suit plot was then let out to M/s 'A' Plus Motors who

owns the adjacent plot. Further, that that his mother died on 2nd May 2000 before she was issued with her title deed.

3. He avers that in 2003, all shareholders in Thome Farmers No. 5 Limited received communication by way of written fliers/notice from the 2nd Defendant's Advocates Messrs Kimani Kahiro & Associates indicating that M/s Thome Farmers No. 5 Limited had been taken over by the 2nd Defendant who was demanding to be paid Kshs 300,000/= to facilitate the processing of title documents, which had been processed in the 2nd Defendant's name, being a subdivision of **LR 13330/373.**

4. He contends that about the year 2006-2007 through her tenant Mr. Francis Muriuki Elijah, his late mother paid the 2nd Defendant herein a total of Kshs 300,000/= through its aforestated advocates and were issued with receipts but her title was not processed because she had not obtained a Grant of Letters of Administration though they remained in active possession and have been paying land rates to Nairobi

County Government. He explains that on or about 27th February 2012, the High Court issued an order allowing five (5) beneficiaries of his mother's estate to manage and collect rent from the suit plot.

5. He states that about July 2025, the tenant on the suit plot informed him through a phone call that the 3rd Defendant had sent agents to value the said property because the registered owner of the plot had failed to service a Kshs 5,000,000 loan he had taken from the Bank, having offered the title to the land as security. He further states that upon conducting a search at the Lands Office, he discovered that the suit plot was sold and transferred to the 1st Defendant on 2nd May 2024 by the 2nd Defendant without their knowledge. Further, that the 1st Defendant had acquired a Kshs.5 million loan from the 3rd Defendant using the title as collateral but failed to service it.

6. He claims that a month later, he received a notice dated 31st July 2025

from their tenant, which had come from the 2nd Defendant's agents messrs Panam & Company Advocates notifying all residents of Thome Farmers No. 5 Estate that the 2nd Defendant was in the process of recovering land that belonged to M/s Thome Farmers No. 5 Limited. He avers that he has reported the matter to the Director of Criminal Investigation office but is apprehensive that the 3rd Defendant could dispose the suit plot any time, which would complicate their effort to recover the property whose value is in excess of Kshs. 100,000,000/=.

Responses

7. The application is opposed by the 1st Defendant. He avers that he is the absolute registered proprietor of the suit plot, vide purchase from the 2nd Defendant. Further, that before purchase, he conducted due diligence. He admits that he allowed the title to the suit plot to be used as security to secure a loan from the 3rd Defendant in favour of Joyland Rides Motors Limited.

8. He contends that whereas the Plaintiff states that his deceased mother was a shareholder in Thome Farmers No.5 Limited via Share Certificate No. 980, there is no proof that it translated to the suit plot and there is no Lease to support the alleged lease of the suit plot to one Francis Muriuki t/a Shineland Motors for twenty (23) years. Further, that the application is not merited as injunctions sought are not anchored on a substantive suit.
9. The 2nd Defendant filed a replying affidavit sworn by its Managing Director, Dr. Jonathan Ciano. He avers that the 2nd Defendant was the registered owner of **LR 13330** having been so registered on 19th December 2000. Subsequently, it undertook subdivision of the parcel into six hundred (600) plots, among them the suit plot, of which it has always been registered as owner and has never transferred or leased it to anyone including the 1st Defendant. He disputes the 2nd Defendant's association with Thome Farmers No.5 and M/s

Panam & Company Advocates and avers that an application for injunction ought to be anchored on a suit.

- 10.** The application is opposed by the 3rd Defendant vide the replying affidavit of Martha Mwakio, its acting head of Legal and Company Secretary. She avers that on 24th September 2024, the 3rd Defendant acceded to a request from Joyland Rides Motors Limited and agreed to advance it a loan of Kshs. 5 million to be repaid within 36 months. Further, that the facility was secured by a first Charge of Kshs.5 million over Title No. **Nairobi /Block 245/237**, and personal guarantees from the directors of Joyland Rides Motors Limited including from the 1st Defendant.
- 11.** She claims that prior to Charging the suit plot, the 3rd Defendant undertook due diligence which confirmed that the property belonged to the 1st Defendant having acquired the same from the 2nd Defendant on 2nd May 2024. Subsequently, the borrower fell into arrears prompting the 3rd Defendant to issue a demand letter and statutory notices in accordance

with the Land Act but the loan was not regularized. She confirms that thereafter, the 3rd Defendant valued the suit plot and instructed messrs Mistan Auctioneers, which had issued the requisite notification of sale indicating that the property shall be disposed by way of public auction on 26th November 2025. He avers that the 3rd Defendant stands to suffer damage in the event the Court issues the orders sought.

- 12.** The Plaintiff filed a supplementary affidavit in response to the replying affidavits filed. He avers that while the 2nd Defendant has always been registered to the suit plot, it entered into a sale agreement for sale of **LR 13330** with the Directors of Thome No. 5 Ltd, which has since become dormant. Further, that **LR 13330** was subdivided by the Directors of Thome No. 5 Limited through a Surveyor, Kamwere & Associates, after which the shareholders were invited to participate in a ballot exercise and were given possession of their respective plots in 1987-1989.

13. The application was canvassed orally in Court on 23rd October 2025 where Counsels for the respective parties reiterated their pleadings.

Analysis and Determination

14. Upon consideration of the instant Notice of Motion application including the respective affidavits and oral submissions, at this juncture the only issue for determination is whether the Plaintiff has met the threshold for grant of a temporary injunction restraining the 1st to 3rd Defendants from interfering with **Plot No. 617 Thome Farmers No. 5 Limited** alias **LR 13330/373** converted to **Nairobi Block 245/237**.

15. The Plaintiff claims that the suit plot belongs to his late mother and that the same had been rented out to the aforementioned company. He contends that the suit plot is Charged to the 3rd Defendant at the behest of the 1st Defendant who claims to be the registered owner, to secure

a loan for Joyland Rides Motor Limited. Further, that the suit plot is up for public auction on 25th November 2025 following the said borrower's failure to repay its loan of Kshs. 5 million.

- 16.** The 2nd Defendant also claims to be registered proprietor of the suit plot, it denies selling or transferring it to the 1st Defendant. It insists that the transfer to the 1st Defendant was fraudulent.
- 17.** The 3rd Defendant contends that it holds a Charge over the suit plot. Further, that the borrower failed to pay a loan of Kshs. 5 million, statutory notices were issued and the sale is scheduled on the 25th November, 2025.
- 18.** In line with the principle established in the case of **Giella v Cassman Brown & Co Ltd (1973) E A 358**, I will proceed to decipher whether the Plaintiffs have established a prima facie case to warrant the orders of interlocutory injunction as sought.

19. I will further rely on the definition of a prima facie case as articulated in the case of **Mrao Ltd v First American Bank Limited (2003)**

KLR 125 where the Court described it as follows:

“..... is a case 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 by the opposite party as to call for an explanation or rebuttal from the latter”.

20. This is a dispute revolving around different parties claiming ownership to the suit plot. The Plaintiff filed an Originating Summons claiming the suit plot through adverse possession and also as a beneficiary of his late mother's estate. The Plaintiff further claims to have rented out the suit plot to a third party. The 2nd Defendant that originally owned the plot disputes selling it to the 1st Defendant who acquired a title to that effect.

21. Looking at what the Plaintiff has presented, I find that the Plaintiff has demonstrated that his late mother indeed had ownership documents in respect to the suit plot which was yet to be registered in her name. I note the 1st Defendant only got registered as an owner of the said plot in May 2024. Further, that on 24th September 2024, the 3rd Defendant advanced a loan to Joyland Rides Motors Limited of Kshs. 5 million to be repaid within 36 months and facility was secured by a first Charge of Kshs.5 million over Title No. **Nairobi /Block 245/237**, and personal guarantees from the directors of Joyland Rides Motors Limited including from the 1st Defendant. It is worth noting that the 2nd Defendant that owned the larger parcel of land denied selling or transferring the suit plot to the 1st Defendant. I opine that there will need to be interrogation on the root of the 1st Defendant's title that he Charged to the 3rd Defendant.

22. The Plaintiff has also provided the proof that the mother's tenant paid the Kshs. 300,000. I note the Plaintiff confirmed

that it leased the suit plot to a third party and has also provided a lease document to that effect. From the explanations of the Plaintiff where he claims ownership of suit plot, and filed an Originating Summons, which to me is a substantive suit, where he is seeking the suit plot through adverse possession, I find that he has established a prima face case as against the Defendants to warrant the orders of interlocutory injunction as sought. I opine that the issue around the real owner of the suit plot cannot be dealt with at this juncture but once the suit is set down for hearing. I opine that it will hence be pertinent to protect the substratum of this suit.

- 23.** It is my considered view that the Plaintiff will suffer irreparable harm which cannot be compensated by way of damages if the suit plot is sold by public auction. Further, that the balance of convenience tilts in favour of protecting the substratum of the suit and granting an injunction.

24. In the foregoing, I find the instant Notice of Motion application merited and will allow it.

25. Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
13TH DAY OF NOVEMBER, 2025**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Mwangi DK for Plaintiff

Macharia for 3rd Defendant

Ms Njueini for 2nd Defendant

Angwenyi for 1st Defendant

Beatrice Mathenge for 4th & 5th Defendants

Court Assistant: Joan