

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCLC NO. E183 OF 2025**

**EPCO LIMITED.....PLAINTIFF/APPLICANT** **BUILDERS**

**VERSUS**

**KENYA RAILWAYS CORPORATION.....1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES.....2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**CHIEF LAND REGISTRAR.....3<sup>RD</sup>**  
**DEFENDANT/RESPONDENT**

**INSPECTOR GENERAL OF POLICE.....4<sup>TH</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

**1.** Before this court for determination is the notice of motion dated 14<sup>th</sup> April, 2025 filed by the plaintiff/applicant, and it is expressed to be brought under **Article 40** of the **Constitution of Kenya**, **Section 13 (7)** of the **Environment and Land Court Act**, **Order 40 Rules 1,3(2),3,4,8** and **10** of the **Civil Procedure Rules** and **Sections 1A, 1B,3A** and **Rule 63 (e)** of the **Civil Procedure Act** seeking the following orders: -

**1. Spent.**

**2. Spent.**

**3. That pending the hearing and determination of the suit inter partes, the honourable court be pleased to issue a temporary injunction to**

***restrain the respondents either by themselves, their agents, servants or assign from entering, encroaching, trespassing on or evicting and or interfering with the plaintiff/ applicant's quiet possession on the suit property being Title Number Nairobi/ Block 34/306 (Formerly L.R No. 209/6439) so as to preserve the substratum of the suit.***

***4. That this honourable court be pleased to order that a status quo prevail and be maintained to the extent that the plaintiff remains in possession of the suit property being Title Number Nairobi/ Block 34/306 (Formerly L.R No. 209/6439) pending hearing and determination of the application and the suit.***

***5. That the honourable court does order the Officer Commanding Station-Parklands Police Station to enforce the orders; and***

***6. That the costs of this application be provided for.***

2. The application is premised on the grounds *inter alia* that the plaintiff/applicant is the registered owner of the property known as Nairobi/Block 34/306 (Formerly L.R. No. 209/6439) herein referred to as the suit property.

3. The application was supported by the affidavit of Ramji Devji Varsani, the director of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that following an advert in the daily nation on 25<sup>th</sup> October, 2007, and being desirous of acquiring the suit property, it entered into a sale agreement with the 2<sup>nd</sup> defendant/respondent dated 10<sup>th</sup> January, 2008 having paid the 10% deposit and the balance thereof on 11<sup>th</sup> November, 2011. The plaintiff/applicant deposed that the transfer instrument was duly executed on 29<sup>th</sup> December, 2011 and stamp duty was settled. Further, that the transfer was duly registered on 6<sup>th</sup> November, 2012 and thereafter, they took occupation and enjoyed quiet possession.
4. The plaintiff/applicant deposed that on 24<sup>th</sup> August, 2024 the suit property was advertised for conversion which they submitted. That on 6<sup>th</sup> March, 2025 they were issued with a new certificate of lease further confirming its ownership. It was further deposed that on 25<sup>th</sup> February, 2025 people representing themselves as officers from the 1<sup>st</sup> defendant/respondent descended on the suit property on grounds that they were reclaiming the same from land grabbers which they reported to the police. A similar occurrence took place on 9<sup>th</sup> April, 2025 where its staff were asked to remove their belongings and vacate the suit property. It was deposed that all this was done without notice or demand

besides there being a certificate of official search confirming its ownership of the suit property. The plaintiff/applicant deposed that the defendants/respondents' actions to trespass on the suit property is unlawful, and the unprocedural misuse and collusion with the police officer is a sign of lawlessness and disregard of the rule of law.

5. The 1<sup>st</sup> defendant/respondents filed its grounds of opposition dated 12<sup>th</sup> May, 2025 challenging the application on the following grounds: -

***1. That the application herein is frivolous, vexatious and is solely conceived designed and prosecuted with a view to perpetuate and abuse of the court process.***

***2. That counsel for the plaintiff in total disregard of the hallowed duty of disclosure and candor owed to the court by advocates as officers of the court, failed to bring to the attention of this court existence and determination of Judicial Review Miscellaneous Application No. 114 of 2015: Republic versus Registrar of Titles Department of Lands & Another ex parte National Museums of Kenya and 2 others, where the suit property known as L.R. No. 209/6439 comprised of this suit was subject to adjudication.***

**3. That the plaintiff herein, in total disregard of the responsibility conferred upon it pursuant to Section 1A and 1B of the Civil Procedure Act, to wit it ought to assist the court in achieving the overriding objective which includes but is not limited to efficient use of judicial time to achieve timely disposal of proceedings, has withheld material facts relating to the suit property which have an immense bearing on the feasibility of the resultant orders emanating from this court as a result of the present suit.**

**4. That the plaintiff's title to the suit property comprised of L.R. No. 209/ 6439 is marred and tainted with fraud and illegality as to its statutory procedural propriety and acquisition.**

**5. That vide a decision by Hon. Lady Justice R.E. Aburili in Judicial Review Miscellaneous Application No. 114 of 2015: Republic versus Registrar of Titles Department of Lands & Another ex parte National Museums of Kenya and 2 others, the learned Judge quashed the decision by the Registrar of Titles to unilaterally remove the Caveat on the suit property comprised of L.R. No. 209/6439.**

**6. That the decision by Hon. Lady Justice R.E. Aburili was never appealed by any of the parties in Judicial Review Miscellaneous Application No. 114 of 2015: Republic versus Registrar of Titles Department of Lands & Another ex parte**

***National Museums of Kenya and 2 others, hence has never been set aside and remains substantively in place.***

***7. That consequently, Section 71 (2) of the Land Registration Act provides that the effect of lodging a caution and/or caveat forbids registration of depositions and making of entries. The plaintiff's claim regarding the transfer of the suit property was rendered untenable by the court's order quashing the Registrar of Title's decision to remove the caveat.***

***8. That the import of Hon. Lady Justice Aburili's decision presupposes that the transfer purportedly done to the plaintiff with respect to the suit property was in breach of the orders of the court, and thus the plaintiff wants this court to irregularly override the orders by a competent court regarding the suit property, conduct which is likely to render the orders of this honourable court otiose.***

***9. That it is trite law that a flawed and unprocedural process of acquisition of land and/or property cannot confer a registrable interest to the land and/or property. The purported transfer to the plaintiff is thus untenable in the absence of procedural propriety.***

***10. That on the basis of the foregoing, the plaintiff's notice of motion application herein is***

***filed in gross abuse of the court process and ought to be dismissed with costs.***

6. Stanley Gitari swore his replying affidavit on 16<sup>th</sup> September, 2025 on behalf of the 1<sup>st</sup> defendant/respondent. He deposed that the suit property is public land pursuant to a grant issued in the year 1932, and that the same was purportedly sold to Guardian International Limited in the year 1995 without regard to due process. Further, that following the sale the 2<sup>nd</sup> defendant/respondent realized that the title held by Guardian International Limited was irregular, since the acquisition from the 1<sup>st</sup> defendant/respondent was illegal.
7. The 1<sup>st</sup> defendant/respondent further deposed that the 2<sup>nd</sup> defendant/respondent filed Civil Case No. 71A of 2003: National Social Security Fund Board of Trustees v Dr. Sally Kosgei & Guardian International Limited. Further, that the suit property was gazetted as National Monuments vide gazette notice no. 5567 on 24<sup>th</sup> September, 1997 and it remains its property.
8. Kellen Njue, the General Manager, Corporation Secretary and Legal services of the 2<sup>nd</sup> defendant/respondent filed her replying affidavit sworn on 15<sup>th</sup> October, 2025. The 2<sup>nd</sup> defendant/respondent deposed that it entered into a sale agreement with Guardian International Company Limited for the

sale of the suit property at KShs. 174, 500,000/-, as the property initially belonged to the 1<sup>st</sup> defendant/respondent who sold it to Guardian International Company Limited. Further, it was deposed that 2<sup>nd</sup> defendant/respondent sold the suit property to the plaintiff/applicant in 2007 and that the transfer could not be registered while it remained a national monument and the caveat created had to be lifted.

- 9.** The 2<sup>nd</sup> defendant/respondent gave a chronology of events and deposed that on 2<sup>nd</sup> November, 2015, National Museums filed a suit in Judicial Review Miscellaneous Application No. 114 of 2015 objecting to the removal of the caveat by the Registrar of Titles without notifying them and on 5<sup>th</sup> October, 2016, the High Court ruled in favour of the National Museums. Further, that on 22<sup>nd</sup> November, 2011, the National Museums of Kenya placed an advert of Caveat Emptor warning prospective buyers of restriction on the land. Further, that the sale agreement provided a disclaimer on clause 7 on the encumbrance, and that the plaintiff/applicant is the author of its misfortunes.
- 10.** It was further deposed that the plaintiff/applicant has not attached documents in support of the historical ownership of the suit property except for the impugned certificate, and the said

prayers cannot issue as the plaintiff/applicant does not possess any proprietary interests over the suit property.

- 11.** C.I Isemeck Kaunya, the Officer Commanding Station Railways Nairobi filed his replying affidavit sworn on 15<sup>th</sup> October, 2025 on behalf of the 4<sup>th</sup> defendant/respondent. The 4<sup>th</sup> defendant/respondent deposed that their investigations established that the 1<sup>st</sup> defendant had constructed staff houses on the suit property and that the structures remain there to date. Further, that the 1<sup>st</sup> defendant/respondent lawfully enforced administrative measures to reclaim all public land in accordance with government directives through the Kenya Railways and Port Police. Further, that the 1<sup>st</sup> defendant/respondent contacted the OCS Nairobi Railways Police Station to safeguard the suit property which has been lawfully reclaimed.
- 12.** The 4<sup>th</sup> defendant/respondent further deposed that it deployed officers to guard the suit property which is still guarded to date, and that its presence was solely as a result of the 1<sup>st</sup> defendant/respondent's action to reclaim its land in compliance with the government's directive.
- 13.** The plaintiff/applicant filed a further affidavit sworn on 12<sup>th</sup> May, 2025. The plaintiff/applicant deposed that the 2<sup>nd</sup>

defendant/respondent is on record confirming that it sold the suit property and without any colour of right the 1<sup>st</sup> defendant/respondent and with the aid of the 4<sup>th</sup> defendant/respondent evicted the plaintiff/applicant and the families that were living on the suit property in clear violation of the law. Further that the decision in **Republic v Registrar of Titles Department of Lands & another Ex-Parte National Museums of Kenya & 2 others [2016] eKLR** is immaterial, as it did not touch on the issue of the title.

14. The plaintiff/applicant filed a further affidavit sworn on 16<sup>th</sup> September, 2025 in response to the 1<sup>st</sup> defendant/respondent replying affidavit. The plaintiff/applicant deposed that there was an investigation into the acquisition of the suit property by the then Kenya Anti-Corruption Commission which dismissed the claim of suspicion of irregularity and granted the transaction a clean bill of health. Further, it was deposed that following this report, the parties in HCCC No. 714 of 2003 entered into a consent dated 22<sup>nd</sup> March, 2010 withdrawing the suit, and a decree was issued to that effect marking the matter as settled.
15. The plaintiff/applicant filed a further affidavit sworn on 23<sup>rd</sup> October, 2025 in response to the 2<sup>nd</sup> and 4<sup>th</sup> defendant/respondent's replying affidavit. The plaintiff/applicant deposed

that the 2<sup>nd</sup> defendant/respondent has demonstrated the fact that they sold the suit property for value which consideration was paid in full. Further, that the caveat was limited to use and development of the suit property and the same did not prohibit any future transaction.

- 16.** The plaintiff/applicant submitted that the 4<sup>th</sup> defendant/respondent has admitted the eviction, which contradicts the position of the 1<sup>st</sup> defendant/respondent who alleged to have been in occupation of the suit property at all material times to the exclusion of everyone else. Further, that a keen reading of the 2<sup>nd</sup> defendant/respondent's replying affidavit seem to affirm the legitimacy of the title as was held by the 2<sup>nd</sup> defendant/respondent which begs the question, what right does the 1<sup>st</sup> respondent have over the suit property to evict it and occupy the same.
- 17.** The application was canvassed through written submissions. The plaintiff/applicant filed its written submissions dated 12<sup>th</sup> May, 2025 and Supplementary Submissions dated 22<sup>nd</sup> October, 2025. The 1<sup>st</sup> defendant/respondent filed its written submissions dated 16<sup>th</sup> September, 2025. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants/respondents did not file their written submissions. Be that as it may, I have considered the application, the replies

thereof, and the written submissions filed by the plaintiff/applicant and the 1<sup>st</sup> defendant/ respondent. I am of the view that the issue for determination is *whether the plaintiff/ applicant has established a prima facie case to warrant the grant of temporary orders of injunction.*

**18.** An interim or interlocutory injunction is an equitable remedy governed by the well- established principles laid down in the case of **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, which provides the conditions that an applicant must satisfy, and which includes: -

- a. Establishment of a prima facie case with a probability of success.*
- b. Demonstration that irreparable injury would be suffered if the injunction is not granted.*
- c. If the court is in doubt, it should decide the application on a balance of probabilities.*

**19.** Also, in the case of **Dr. Simon Waiharo Chege vs. Paramount Bank of Kenya Ltd. Nairobi (Milimani) HCCC No. 360 of 2001**: it was held:-

*“The remedy of injunction is one of the greatest equitable reliefs. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation which have been, or are*

***being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as appertains to the subject matter of the suit does not meet the approval of the eye of equity.”***

20. The plaintiff/applicant contends that it is the registered owner of the suit property having acquired the same through purchase from the 2<sup>nd</sup> defendant/respondent. To confirm its ownership, the plaintiff/applicant annexed a copy of the certificate of lease issued on 6<sup>th</sup> March, 2025. The plaintiff/applicant deposed that it has been in occupation and quiet enjoyment of the suit property until sometime in the month of February, 2025, when officers from the 1<sup>st</sup> defendant/respondent with the aid of police officers

from the 4<sup>th</sup> defendant/respondent, went to the suit property on claims that it was reclaiming grabbed land.

21. On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents challenged the root of the title and blamed the plaintiff/applicant for the misfortunes that now surrounds it. The plaintiff/applicant and the 1<sup>st</sup> and 2<sup>nd</sup> defendant/respondent went into detail to discuss the history of the suit property. Let me say that at this stage, the court is not required to make a definitive finding as the issues canvassed by the parties are fit for trial. As it is, the plaintiff/applicant has been evicted from the suit property which I believe prompted it to move to court for protection.

22. The question that begs asking is whether the plaintiff/applicant has established a prima facie case. The Court of Appeal in **Nguruman Limited vs. Jan Bonde Nielsen & 2 Others [2014] eKLR** that:-

***“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.....  
The standard of proof of that prima facie case***

***is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed."***

23. Further, in the case of **Kenleb Cons Ltd v New Gatitu Service Station Ltd & another [1990] KEHC 53 (KLR)**, it was held that:

***"To succeed in an application for injunction an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application, but must also show he has a right, legal or equitable, which requires protection by injunction. He must also satisfy the three tests set out in the often cited case of Giella v Cassman Brown & Co Ltd, 1973 EA 358; for the grant of an interlocutory injunction."***

24. I am persuaded to rely on the above authorities and apply the same to the circumstances of this case. While the plaintiff/applicant contends ownership of the suit property and the unlawful acts of the defendants/respondents, it appears that it did not disclose to the court the full facts of the case, that was brought up by the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents. More importantly, it has not been shown the damage to be suffered or the loss already incurred to enable the court balance the

interests besides evictions. In my view, and in the event that the plaintiff/ applicant succeeds in trial, I believe damages would be an appropriate relief for compensation.

- 25.** In that case, I am not satisfied that on a balance of probabilities, the plaintiff/applicant has established a prima facie case. Having stated so, I find no need to determine the two conditions that must be met to satisfy the conditions for a temporary injunction.
- 26.** The upshot of the above is that the notice of motion dated 14<sup>th</sup> April, 2025 lacks merit and it is hereby dismissed. Costs in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. MBOGO C.G.  
JUDGE  
27/11/2025.**

**In the presence of:**

*Mr. Benson Agunga - Court assistant*

*Mr. Shikanda for the Plaintiff/Applicant*

*Mr. Obuya for the 1<sup>st</sup> Defendant /Respondent*

*Mr. Allan Kamau for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents*

ORIGINAL