

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC CASE NO E059 OF 2025

NYAKUNDI STEPHEN MARAGIA.....PLAINTIFF/RESPONDENT

VERSUS

TAPLULE KOSKEI.....DEFENDANT/APPLICANT

RULING

1. This ruling is in respect of the Defendant/Applicant's Notice of Motion application dated 3rd October, 2025 which seeks the following orders:

a) Spent

b) Spent

c) That pending the hearing and determination of this suit, an order of injunction do issue restraining the Plaintiff/Respondent, his agents, servants, or assigns from entering upon or interfering with the Defendant/Applicant's quiet possession and use of the suit land.

d) That the Defendant/Applicant be permitted to access, repair, and maintain her homestead and developments on the suit land pending the hearing and determination of this suit.

e) That the OCS Kuresoi Police Station do ensure compliance with and enforcement of the orders of this Honourable Court.

f) That cost of this application be borne by the Plaintiff/Respondent.

2. The application is supported by the annexed affidavit of Taplule Chelangat Koskei, the Defendant/Applicant, who deponed that in 1997,

he was allocated the parcel of land Title No. Nakuru/Saina Settlement Scheme/1227 and occupied the same for over twenty-four years and developed it. It was her deposition that the Plaintiff is claiming part of the suit parcel and has caused her unlawful arrest and prosecution in Molo CM Criminal Case No E1455 of 2021, where she was acquitted.

3. The Defendant/Applicant further deponed that the Respondent is a serial land grabber targeting vulnerable widows and elderly members of society aided by rogue police officers. She deponed that she is an elderly woman aged ninety-six years and her family stands to suffer irreparable loss and injustice through the deprivation of their ancestral land. She urged the court to allow the orders sought.
4. Nyakundi Stephen Maragia, the Plaintiff/Respondent filed a Replying Affidavit sworn on 23rd October, 2025, and deponed that the application is an abuse of court process and it is the Defendant/Applicant who trespassed on the property known as NAKURU/SAINO SETTLEMENT SCHEME/1227 prompting him to seek legal redress.
5. It was his deposition that in August 2007, he entered into a sale agreement with Benjamin Rono and was subsequently registered as the owner of the property. He deponed that in 2009, he constructed a temporary structure for his workers but in 2014, the Defendant/Applicant encroached towards the edge of his parcel of land and erected a temporary house which she never settled in. The Plaintiff/Respondent urged the court to dismiss the application with costs as he has been in

occupation and that the Applicant has not met the threshold required in law for issuance of the orders sought.

DEFENDANT/APPLICANT'S SUBMISSIONS

6. Mr. Bore, counsel for the Defendant/Applicant filed submissions dated 24th October, 2025, and identified the following issues for determination:

a) Whether the applicant has established a prima facie case with a probability of success?

b) Whether the applicant has demonstrated that she stands to suffer irreparable injury that cannot be compensated by damages?

c) Whether the balance of convenience tilts in favour of the applicant?

7. On the first issue, counsel submitted that the Applicant's long and uninterrupted occupation of over two decades establishes possessory rights deserving protection. Counsel submitted that the Applicant has established a *prima facie* case with a high probability of success and relied on the following cases: **Giella vs Cassman Brown & Co Ltd (1973) EA 358**, **Nguruman Ltd vs Jan Bonde Nielsen & 2 others [2014] eKLR**, **Munyu Maina vs Hiram Gathiha Maina [2013] eKLR** and **Mrao Ltd vs First American Bank of Kenya Ltd & 2 others [2003] eKLR**.

8. On the second issue, counsel submitted that displacement at her advanced age would occasion her family to face homelessness and ill

health that money cannot repair. On the third issue, counsel submitted that the balance of convenience is in favor of the Applicant and urged the court to grant the orders as prayed with costs.

PLAINTIFF/RESPONDENT’S SUBMISSIONS

9. Mr. Makori, counsel for the Respondent filed submissions dated 31st October, 2025, and identified the issue for determination as whether the applicant has met the threshold for grant of an interlocutory injunction. Counsel submitted that the applicant has failed to demonstrate a *prima facie* case as the person whose proprietary rights have been infringed is the Respondent and not the Applicant.
10. Counsel relied on the cases of **Giella vs Cassman Brown (1973) EALR 358, Vivo Energy Kenya Limited vs Maloba Petrol Station Limited & 3 others [2015] eKLR, National Bank of Kenya vs Duncan Owour Shakali & Another CA No 9 of 1997 and Habib Bank Ag Zurich vs Eugene Marion Yakub CA No 43 of 1982 (unreported).**
11. Counsel further relied on the case of **Nguruman Limited vs Jan Bonde Nielsen (2014) eKLR** and submitted that the applicant has not demonstrated the injury she will suffer if the injunction is not issued. It was counsel’s submission that the applicant is not in occupation of the suit property and therefore the balance of convenience cannot tilt in her favor.
12. Mr. Makori also relied on the cases of **Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2008) eKLR** and **Amir Suleiman vs Amboseli**

Resort Limited [2004] 2KLR 589, and urged the court to dismiss the application with costs to the respondent.

ANALYSIS AND DETERMINATION

13. The issue for determination is whether the applicant has met the threshold for the grant of an order of temporary injunction pending the hearing and determination of the suit. In the case of **Rockland Kenya Limited v Elliot White Miller [1994] eKLR**, the court held as follows:

“The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in the action if the matters 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. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to resolve conflicts of evidence on affidavit as to facts on which

the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. Such matters are to be dealt with at the trial. Nonetheless, the Court must in the exercise of its discretionary power in this regard be satisfied that the claim in respect of which an interlocutory injunction is sought is neither frivolous nor vexatious: in other words, that there is a serious question to be tried.”

14. Order 40 Rule 1 of the Civil Procedure Rules 2010 provides as follows:

Where in any suit it is proved by affidavit or otherwise—

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*
- b. that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.*

15. This case is in this court by virtue of the Defendant/Applicant's counterclaim dated 31st August, 2022, in ELC CASE NO 65 OF 2021 at the Chief Magistrates Court. The Applicant sought an order of adverse possession and the file was subsequently transferred to this court.
16. The Applicant must establish a *prima facie* case with a probability of success and that he/she will suffer irreparable loss and damage if the injunction is not granted and lastly, in case the court is in doubt, the balance of convenience tilts in favour of granting the order of injunction.
17. Both the Applicant and the Respondent claim proprietary rights over the suit land. Counsel for the parties had recorded a consent that the Regional Surveyor and the District Land Registrar to conduct a survey over the disputed land Nakuru/Saino Settlement Scheme/1227 and 1228 for purposes of ascertaining the actual size of the parcels, boundaries, occupation and duration of occupation on both parcels, developments undertaken on the two parcels and file a report within 30 days.
18. The survey report was done and filed in court on 17th October 2024 but was not conclusive as the Regional Surveyor concluded that neither the Plaintiff nor the Defendant produced documents to show ownership of the parcels, consequently they could not establish whether they were bonafide owners.
19. The purpose of a temporary injunction is to preserve the substratum of the case. It would be in the interest of justice for both parties for an order

of *status quo* to be issued to preserve the suit land pending the hearing and determination of this suit. Costs in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF NOVEMBER 2025.

**M. A. ODENY
JUDGE**