

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCLOS No. E004 OF 2025

NANCY NYANCHERA OCHARO
PLAINTIFF

VERSUS

JAPHET **OMBOGA**
MASIOGE **DEFENDANT**

RULING

1. The Plaintiff moved the court through Originating Summons (OS) dated 29th September 2025. She averred therein that she had become entitled to a 25ft by 100ft portion of the parcel of land known as West Mugirango/Siamani/1795 (the suit property) by adverse possession. She prayed that she be declared to have become the legal owner of the portion by adverse possession, she be registered as sole proprietor of the portion in place of the Defendant and that the Defendant be compelled to execute the mutation form, partition form and any other forms or instrument necessary for the implementation of an order for her registration within thirty days of the order failure to which the Deputy Registrar of the Court be authorized to execute on his behalf. She also sought costs of the suit.

2. Alongside the OS, the Plaintiff filed Notice of Motion dated 29th September 2025, which is the subject of this ruling. The following orders are sought in the application:

1. *THAT this matter be certified urgent and service of the same be dispensed with in the first instance and this application be heard ex-parte (sic).*
2. *THAT pending the hearing of this application inter-parties the Honourable Court be pleased to issue a (sic) interim injunction restraining the Defendant/Respondent whether by himself, his servants or agents or anyone claiming under him or otherwise from selling, transferring, subdividing, leasing, charging, assigning or otherwise alienating the parcel of Land known as WEST MUGIRANGO/SIAMANI/1795 or otherwise doing any act that would jeopardize or interfere with the Plaintiff/Applicants use or occupation of thereof.*
3. *THAT the Honourable Court be pleased to issue an order of inhibition barring the registration of any transfer, lease, charge and or assignment or otherwise any instrument to alienate the parcel of land known as Land Title Number WEST MUGIRANGO/SIAMANI/1795 pending the hearing and determination of thus suit application inter-parties.*
4. *THAT pending the hearing and determination of this suit, the Honourable Court be pleased to issue an Order of*

Temporary injunction barring and/ or restraining the Defendant/Respondent whether by himself, his servants or agents or anyone claiming under him or otherwise from selling, transferring, subdividing, leasing, charging, assigning or otherwise alienating the Parcel of Land known as Land Title Number WEST MUGIRANGO/SIAMANI/1795 or otherwise doing any act that would jeopardize or interfere with the Plaintiff/Applicants use or occupation thereof.

5. THAT the Honourable Court be pleased to issue an Order of inhibition barring the registration of any transfer, lease, charge and/or assignment or otherwise any instrument purporting to alienate the Parcel of Land known as Land Title Number WEST MUGIRANGO/SIAMANI/1795 pending the hearing and determination of this suit.

6. THAT costs of this application be provided for.

3. The application is supported by an affidavit sworn by the Plaintiff. She deposed therein that on 25th March 2010, she purchased the portion of the suit property at a consideration of KShs 400,000 from one Julius Nyangau Nyambarora who was instructed by the Defendant, the registered proprietor, to sell it on his behalf since he was unwell. That Julius Nyangau Nyambarora and her took the consideration to the Defendant at his home in Birongo, Nyamira and the Defendant handed

over to them house keys and a building plan of the house under construction.

4. The Plaintiff further deposed that she has been residing in the house since then to the date of the affidavit and that she proceeded with construction of the house. That in June 2025, the Defendant issued to her a notice to vacate yet his title had been extinguished by adverse possession. She added that the Defendant had refused to transfer the property to her and was instead intending to forcefully take possession.
5. The Defendant opposed the application through a replying affidavit in which he deposed that he is the registered proprietor of the suit property and that there is no privity of contract between him and the Plaintiff. That in the year 2013, he deposited the title deed in respect of the suit property with Kinara Hospital Limited at the request of Julius Nyangau Nyambarora to secure the release of Julius' wife who had been admitted as a patient. That Julius who was his trusted friend and spiritual leader failed to pay the amount owed to the hospital and that he paid the hospital on 3rd June 2025 to reclaim his title deed.
6. The Defendant further deposed that upon receiving the title deed and visiting the suit property, he met the Plaintiff who he presumed to be a tenant. That Julius had been his caretaker in respect of the suit property and used to send him money as rent collected from tenants. He further stated that he was

surprised when the Plaintiff claimed that he purchased the suit property from Julius and added that he never instructed Julius to sell the suit property.

7. The application was canvassed through written submissions. The Plaintiff filed submissions dated 29th October 2025 while the Defendant filed submissions dated 12th November 2025.
8. I have carefully considered the pleadings, the affidavits and the submissions. The issues that arise for determination are whether the Plaintiff has satisfied the test for granting an interlocutory injunction and whether the orders sought in the application should issue.
9. 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.**

10. In **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** [2003] eKLR, the Court of Appeal defined *prima facie* case to mean:

... a case in 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... [it] is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.

11. In **Nguruman Limited v Jan Bonde Nielsen & 2 Others** (supra) the Court of Appeal adopted the definition in **Mrao** and added:

We adopt that definition save to add the following conditions by way of explaining it. 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. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. 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.

12. There is no dispute that the Defendant is the registered proprietor of the suit property and that the Plaintiff is in occupation of a portion of the suit property which she is claiming to the exclusion of the Defendant. By the Plaintiff's

own account, she entered the suit property through a sale transaction. The contestations as to whether there was a valid sale and whether the alleged transaction can form a valid basis for an adverse possession are all matters that can only be resolved at trial.

13. Having demonstrated proprietorship by the Defendant and that she has possession, I am satisfied that the Plaintiff has established a *prima facie* case with a probability of success. Unless an injunction is granted, she may be evicted and that will constitute an injury which may not be adequately compensated through damages.

14. I find merit in the application. In line with **Order 40 rule 6** of the **Civil Procedure Rules**, I will limit the lifespan of the injunction to a period of only twelve months. The Plaintiff should hasten in prosecuting and concluding her case.

15. In the result, I make the following orders:

a) An injunction is hereby granted restraining the Defendant whether by himself, his servants or agents or anyone claiming under him from selling, transferring, subdividing, leasing, charging, assigning or otherwise alienating the parcel of land known as West Mugirango/Siamani/1795 or otherwise doing any act that would jeopardize or interfere with the Plaintiff's use or occupation

thereof pending hearing and determination of this suit or for a period of twelve (12) months from the date of delivery of this ruling, whichever occurs first.

b) An order of inhibition is hereby issued barring the registration of any transfer, lease, charge and/or assignment or any instrument purporting to alienate the parcel of land known as West Mugirango/Siamani/1795 pending hearing and determination of this suit or for a period of twelve (12) months from the date of delivery of this ruling, whichever occurs first.

c) The Plaintiff shall have costs of Notice of Motion dated 29th September 2025.

Dated, signed, and delivered at Nyamira, this 26th day of November 2025.

**D. O. OHUNGO
JUDGE**

Delivered in the presence of:

Ms Omwenga for the Plaintiff

Mr Aminga holding brief for Mr Nyariki for the Defendant

Court Assistant: B Kerubo