

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCL MISC CASE NO E170 OF 2025

JULIUS JOSEPH GITAU NJUGUNA

**(Suing as the Personal & Legal Representative/
Administrator of the Estate of the Late**

MONICA WANJIKU THUO (Deceased)

APPLICANT

VERSUS

NG'UNDU FARMERS CO-OPERATIVE

SOCIETY LIMITED (IN LIQUIDATION) 1ST

RESPONDENT

PHILLIP U. ULUMA (Sued as the Official

Liquidator of Ng'undu Farmers'

Cooperative Society Limited 2ND

RESPONDENT

NAIROBI CHIEF LAND REGISTRAR 3RD

RESPONDENT

RULING

Background

1. Before this court for determination is the Applicant's Notice of Motion Application dated the 10th June, 2025 , brought pursuant to the provisions of **Article 48** and **50(1)** of the **Constitution**, **Section 66** of the **Co-operative Societies Act, Cap 490**, **Section 432(2)** of the **Insolvency Act, Cap 2015**, **Sections 1A, 1B, 3A** of the **Civil Procedure Act**, **Section 7** of the **Limitation of Actions Act, Cap 22** and

Order 40, Rules 1, 2 and 4 and Order 51 Rule 1 of the Civil Procedure Rules, seeking the following reliefs:

- i. This Honourable Court be and is hereby pleased to issue an order of temporary injunction restraining the Respondents, the Nairobi City County, their agents or any third parties from auctioning, transferring, selling, leasing, entering upon, or in any other manner interfering with Plot Number 593 (Nairobi Block 126/570), pending the hearing and determination of the intended claim for adverse possession.*
- ii. This Honourable Court be and is hereby pleased to grant the Applicant leave to institute proceedings against the Official Liquidator of Ng'undu Farmers' Cooperative Society Limited (In Liquidation) for a declaration that the Estate of the late Monicah Wanjiku Thuo has acquired ownership of Plot Number 593, also known as Nairobi Block 126/570, by way of adverse possession.*
- iii. This Honourable Court be pleased to issue an order directing the Official Liquidator of Ng'undu Farmers' Cooperative Society Limited (In Liquidation), and the Chief Land Registrar Nairobi, the proposed 3rd Respondent, to furnish the Applicant with:*

a) a certified copy of the title deed relating to Plot Number 593 (Nairobi Block 126/570), or

b) in the alternative, where the said parcel title has not been processed, a certified copy of the mother title for Nairobi Block 126 and a status report on the subdivision thereof, with particular reference to Plot Number 593 (Nairobi Block 126/570), to enable the Applicant institute the intended suit for adverse possession.

iv. This Honourable Court be pleased to grant such further or other orders as it may deem just and expedient in the circumstances of this case.

v. Costs of this application be provided for.

2. The Motion is supported by the Affidavit of Julius Joseph Gitau Njuguna, the duly appointed legal representative of the Estate of the late Monica Wanjiku Thuo (Deceased), having been issued with a Limited Grant of Letters Administration ad litem for the sole purpose of instituting these proceedings on behalf of the Estate.
3. Mr Gitau deponed that the subject of these proceedings is Plot No. 593, also known as Nairobi Block 126/570, situated in Kamulu area in Ruai, Nairobi City County and measuring approximately 2.07 Ha or thereabouts (*hereinafter the suit property*).

4. The suit property, he averred, is part of a larger 4,000-acre parcel previously owned by Ng'undu Farmers' Cooperative Society Limited, a land-buying and selling entity which subdivided and allocated parcels to its members.
5. It was deposed that the Society was placed under liquidation by an order of the Commissioner for Cooperative Development dated 29th June 2007 and that upon the liquidation aforesaid, the 2nd Respondent was appointed the official liquidator of the 1st Respondent and, consequently, all properties of the Society, including the subject parcel, vested in the liquidator for purposes of winding up.
6. Despite the liquidation, it was stated, the 2nd Respondent has not undertaken any steps to reclaim the subject parcel or interfere with the Applicant's occupation. The Applicant avers that he has written formal letters to the liquidator requesting information on the parcel, but has received no meaningful response.
7. He noted that the property was originally sold to one Stephen Mbugua Njuguna by the Society, who then transferred his interest to the late Paul Mwaura Thuo by a Sale Agreement dated 15th February 1990 at a consideration of Kshs. 131,500/= . Due to his disability and dependence, it was deposed, Paul Mwaura Thuo gifted the plot to his caregiver sister, the late Monicah Wanjiku Thuo, in 1992, and that she immediately took possession of the property in or about 1994.

- 8.** It was deposed by the Applicant that following the death of Paul Mwaura Thuo in 1994, Monicah Wanjiku Thuo continued in open, uninterrupted, exclusive, and peaceful occupation of the property without seeking or obtaining any further consent from the Society or any third party.
- 9.** It was contended that Monicah remained in occupation until her death in 2017 during which time she fenced the property, constructed semi-permanent structures, drilled a borehole, and carried out extensive developments for residential purposes and that she was buried on the property, signifying her permanent residence.
- 10.** According to the Applicant, the parcel is registered under Ng'undu Farmers Cooperative Society Limited (In Liquidation) as shown by the Nairobi City County Rates Bill dated 11th June 2024, which identifies the property as Parcel Number Nairobi Block 126/570 and that the 2nd Respondent has orally confirmed on multiple occasions that over 95% of the titles for Nairobi Block 126, originally owned by Ng'undu Farmers' Cooperative Society Limited, have already been processed in collaboration with the Nairobi Chief Land Registrar.
- 11.** It was deposed that the Liquidator has further indicated that the mother title for the entire Block 126 is in the custody of the Nairobi Land Registry, and it is this mother title that has been, and continues to be used for processing and issuing individual titles to beneficiaries of the subdivided parcels.

- 12.** Although Nairobi Block 126/570 does not yet have a separate processed title, it was argued, the larger parent title exists and is fully within the custody and control of the Nairobi Chief Land Registrar. As such, the argument that the title is unavailable does not hold. This, he urged, justifies the inclusion of the Nairobi Chief Land Registrar as the 3rd Respondent in these proceedings.
- 13.** The Applicant deposed that the property is clearly demarcated and identifiable on the ground; that it measures approximately 2.07 hectares, and the boundaries are marked with permanent beacons; that a certified survey map is available and clearly delineates the exact location and size of the parcel in question and that the physical features and documentary evidence confirm the distinct and uninterrupted occupation of the subject parcel by the deceased and now her estate.
- 14.** The Applicant asserts that since at least 2006, a period of over 12 years has lapsed before the death of Monicah Wanjiku Thuo, during which she had been in continuous, exclusive, unchallenged occupation of the property, thus satisfying all the legal requirements of adverse possession. As her Estate, they have continued in possession of the land to date, and no person, including the Respondents or any alleged heirs, has ever attempted to evict them, assert ownership, or interrupt their occupation of the property in the last 30 years.
- 15.** It was contended that despite being the actual owners in possession, they are unable to obtain title in their name

because the original registered proprietor remains the 1st Respondent, which is in liquidation, and they require leave of the court to institute proceedings against the Liquidator under the provisions of **Section 432 (2)** of the **Insolvency Act**.

- 16.** It was deposed that in addition, under the Limitation of Actions Act and relevant case law, production of the original title is a statutory requirement for instituting an adverse possession claim, which they cannot fulfill without the Respondents' cooperation or a court order.
- 17.** According to Mr Njuguna, the estate of the late Monicah Wanjiku Thuo is entitled to be issued with formal documents of ownership in respect of the suit property, a necessity for the full enjoyment of their constitutional rights to property under **Article 40** of the **Constitution**.
- 18.** He urged that the subject property is currently at serious risk of being auctioned by the Nairobi City County due to accrued land rates now amounting to approximately Kshs. 539,600 and that no payments have been affected in the name of the true beneficiaries owing to the lack of formal ownership documents.
- 19.** In response to the Motion, the 2nd Respondent on his own behalf and on behalf of the 1st Respondent filed a Replying Affidavit on 24th June 2025. He deposed that he serves as a Senior Deputy Commissioner for Co-operative Development in the Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSME) Development.

- 20.** It was his deposition that in February, 2008, he was appointed by the Commissioner for Co-operative Development as the Liquidator of Ng'undu Farmers Co-operative Society Limited, which had been placed under liquidation pursuant to **Section 62** of the **Co-operative Societies Act, Cap 490, Laws of Kenya**.
- 21.** He explained that as a Liquidator, his tasks involve gathering assets and liabilities of the defunct Ng'undu Farmers Co-operative Society Limited and that liabilities include un-processed titles deed for the members and other persons who had purchased various parcels of land from the various members.
- 22.** He stated that one such instance involved the present case, which arose from a succession cause being **High Court (P&A) Succession Cause 1568 of 1994** which matter was eventually determined and a grant made in favour of Patricia Wanjiku Mwaura as the Administrator and the beneficiary and that the Applicant filed **Appeal No 11 of 2017** at the Court of Appeal which he later abandoned.
- 23.** According to the Respondents, after his loss aforesaid, the Applicant moved to this court where he filed a claim for adverse possession; that his claim partially succeeded and was granted parcel LR 209/9754/53 in Huruma Nairobi and that rather than appealing, the Applicant went ahead and filed **Miscellaneous Application No. E164 of 2024** which he withdrew on 29th October 2024.

- 24.** Unrelenting, it was averred, the Applicant thereafter filed the present suit which is a back door Appeal against the Orders issued in **HCC P&A 1568 of 1994**, the Judgment in **HCC ELC No. 201 of 2017 (O.S.)**, and **HCC Misc. Application E164 of 2024** and that the same constitutes an abuse of court process and is founded on material concealment and misrepresentation. This being so, the orders sought herein being equitable reliefs cannot lie.
- 25.** According to Mr. Uluma, the Applicant's failure to join the Administrator and the beneficial owner of the land parcel Nairobi/Block 129/570, formerly owned by Ng'undu Farmers Co-operative Society Limited, was a deliberate act intended to facilitate fraud through the court process.
- 26.** Mr. Uluma further stated that the Applicant has committed perjury by failing to make full and frank disclosure of material facts before the court; that the Applicant's conduct is insincere and dishonest, particularly given his knowledge of existing orders issued by two different courts which he had not disclosed and that the Applicant failed to join Patricia Wanjiku Mwaura, against whom he sought orders, as a party to the proceedings.
- 27.** The Applicant filed a Supplementary Affidavit on 4th August, 2025. He reiterated his assertions as set out in the Affidavit in support of the Motion stating that first, the present Motion is limited in scope and purpose, only seeking leave to institute legal proceedings against the Official Liquidator of Ng'undu Farmers' Cooperative Society Limited.

28. He noted that significantly the Respondent has not opposed this relief but has instead raises issues touching on the merits of the intended adverse possession claim, as well as references to other legal proceedings allegedly instituted by him in relation to the same parcel of land.
29. The foregoing, he urged are premature as they pertain to the substantive cause of action, which is yet to be filed, and are therefore outside the scope of the present application. The court, he stated, should confine its consideration to the narrow question of whether he has disclosed a *prima facie* arguable case that justifies the grant of leave, and disregard the speculative and extraneous matters introduced in the Respondent's affidavit.
30. According to Mr Njuguna, the Respondent's reference to several historical proceedings is intended to distract the court from the limited scope of this application. He noted that in **High Court Succession Cause No. 1568 of 1994**, a grant of letters of administration was issued in favour of Patricia Wanjiku Mwaura, while in **ELC Case No. 201 of 2017**, this court granted his claim for adverse possession in respect of a different parcel, namely L.R. 209/9754/53 (Huruma); that **Miscellaneous Application No. E164 of 2024**, was never properly filed, served or prosecuted and that **Misc. Application No. E107 of 2025**, is separate and distinct and has no bearing on the current application for leave.

31. As regards the reliance on the doctrines of *res judicata* and *sub judice*, he termed the same as misconceived noting that the issues were addressed and conclusively settled in **ELC Case No. 201 of 2017** vide.

32. He deponed that the alleged sale of Parcel No. Nairobi/Block 126/570 to the late Paul Mwaura Thuo was never completed and remains legally questionable; that no executed or registered sale agreement exists, and no share certificate was ever issued in Paul Thuo's name.

Submissions

33. The Applicant filed submissions on the 4th August, 2025. Counsel submitted that the threshold for the grant of interim injunctive relief has been met in accordance with the principles established in **Giella vs Cassman Brown & Co Ltd [1973] E.A. 358** *to wit* the establishment of a *prima facie* case with a probability of success; proof that the Applicant stands to suffer irreparable harm if the injunction is not granted; and if the court is in doubt, it should determine the application on the balance of convenience.

34. As regards the establishment of a *prima facie* case, it was submitted that the Applicant has demonstrated a clear and arguable case based on longstanding possession and occupation of Plot Number 593 (Nairobi Block 126/570), which forms the basis of an intended claim for adverse possession, and that the Applicant's continued residence

and improvements on the property support the existence of a legally cognizable interest worthy of protection.

- 35.** It was submitted that it is undisputed that the Nairobi City County Government has issued notices of auction citing outstanding land rates arrears in respect of the subject parcel; that a list released in June 2025 confirms that the suit property is among those earmarked for forced sale and that the risk of auction is not theoretical or speculative, it is imminent and real and the Applicant will suffer irreparable harm.
- 36.** Counsel submitted that the Applicant seeks leave to institute proceedings against Ng'undu Farmers' Cooperative Society Limited, in accordance with **Section 66(1) (b)** of the **Co-operative Societies Act, Cap 490** and as guided by **Section 432(2)** of the **Insolvency Act** which mandates the seeking of leave.
- 37.** Reliance in this regard was placed on the case of ***Kagaa Farmers Co-operative Society vs Daniel Githiora Garuha & another [2019] KEHC 813 (KLR), Mwaura v Co-operative Bank of Kenya Ltd & 2 others [2019] eKLR***, and ***Charles Mbatha Suing as the Liquidator of Steel Sacco Society Limited (in liquidation) vs Kenya United Steel Company (2006) Ltd (2017)eKLR***.
- 38.** Counsel submitted that the suit property, Nairobi/Block 126/570, has never been the subject of final determination by the Environment and Land Court and the Respondent's reliance on previous proceedings involving distinct parcels,

such as L.R. No. 209/9754/53 (Huruma), is wholly irrelevant and misleading. Accordingly, any reference to *res judicata* or *sub judice* is misconceived.

39. It was urged that the court should disregard the speculative and pre-emptive arguments presented in opposition to the intended adverse possession claim, as they are not germane to the question of leave. Counsel submitted that the procedural fairness of the process demands that the Applicants be granted an opportunity to ventilate their claim on the merits in a properly constituted suit, not be shut out at the gate by collateral attacks and factual misdirection.

40. As to whether the Applicant is entitled to an order compelling the Official Liquidator and the Chief Land Registrar to produce a certified copy of the title deed for Plot Number 593 (Nairobi Block 126/570), or alternatively, the mother title and a status report on its subdivision, Counsel submitted in the affirmative noting that the right to access land records, including title deeds, is grounded in the principle of access to information under **Article 35** of the **Constitution of Kenya**, as well as the Applicant's right to a fair hearing under **Article 50**.

41. The information sought, it was submitted, is fundamental to the formulation, filing, and prosecution of the intended suit for adverse possession and that without it, the Applicant is unable to effectively define the subject matter of the intended proceedings, serve relevant parties, or

comply with procedural requirements under the Civil Procedure Rules.

42. Counsel for the 1st and 2nd Respondents filed submissions on 15th August, 2025. Counsel submitted that the Applicant's motion falls short of the legal threshold for the grant of interim relief as set out in ***Giella v Cassman Brown & Co. Ltd (1973) EA 358***, which requires proof of a prima facie case, likelihood of irreparable harm, and, where in doubt, consideration of the balance of convenience.
43. It was stated that the Applicant has not demonstrated any genuine prima facie case, as the alleged threat of auction by the Nairobi City County Government is entirely unsubstantiated, no demand, default, or auction notices were exhibited. Further, that the County Government, whose participation was necessary, had not been joined in the proceedings, rendering the application defective.
44. Counsel argued that the claim is based on conjecture and a fabricated sense of urgency, and that no irreparable harm has been established since no imminent loss has been proved.
45. Counsel explained that the Applicant is guilty of non-disclosure, having concealed critical information about multiple previous proceedings, including **Succession Cause No. 1568 of 1994, ELC No. 201 of 2017, and Misc. Application No. E164 of 2024**, all of which had addressed similar issues over the same parcel of land.

- 46.** Such concealment, it was submitted, disentitles the Applicant to equitable relief, as one must come to court with clean hands. Reliance in this regard was placed on the cases of *Halima Haji Sarah vs Multiple Haurliers (E.A) Limited & another [2022] eKLR* and *Mohamed Shally Sese (Shah Sese) vs Fulson Company Ltd & another [2006] eKLR*.
- 47.** The Applicant's conduct, according to Counsel was deceptive and intended to mislead the court into facilitating a fraudulent claim for adverse possession over property whose ownership had long been determined. It was further contended that the Motion is a backdoor appeal from **ELC No. 201 of 2017**, where a similar claim had already been dismissed.
- 48.** It was submitted that the Applicant's omission of Patricia Wanjiku Mwaura, the administratrix of the estate of Paul Mwaura Thuo, was deliberate, to conceal the true ownership of the property. Counsel maintained that litigation over the same subject had reached finality and should not be reopened under the guise of a fresh motion.
- 49.** The Applicant filed supplementary submissions on the 22nd October, 2025. Counsel submitted that at this interlocutory stage, the court is only being asked to determine a narrow procedural issue *to wit* whether leave should be granted to sue the Liquidator under **Section 432(2)** of the **Insolvency Act, 2015**.

50. Counsel averred that the Respondents' extensive arguments on the merits of the intended suit for adverse possession were premature misplaced, and pre-emptive. To support this position, reliance was placed on **Sameja vs Sal Tree Hotel Limited (Civil Appeal E079 of 2023) [2024] KEHC 14040 (KLR)**, and **Charles Mbatha (as Liquidator of Steel Sacco Society Ltd) v Kenya United Steel Co. (2006) Ltd [2017] eKLR**.
51. On the issue of *res judicata*, the Applicant maintained that the Respondents' argument was erroneous. Referring to **Suleiman Said Shabhal vs IEBC & Others [2014] eKLR** and **Uhuru Highway Development Ltd vs CBK (1999) eKLR**, Counsel noted that *res judicata* only applies where there is a final judgment on merits involving the same parties, subject matter, and cause of action.
52. In ELC No. 201 of 2017, it was noted, although Nairobi/Block 126/570 and other parcels were initially listed, the court only made findings on L.R. No. 209/9754/53 Huruma, as the proper Respondents for the other parcels had not been joined. This position, it was argued, was affirmed by Justice Mbogo in **Beatrice Wambui Njuguna vs Chieko Housing Ltd & Another (ELC(OS) No. E044 of 2024)**, where the court held that since Nairobi/Block 126/570 was not conclusively adjudicated upon in ELC 201 of 2017, a plea of *res judicata* could not arise.

53. Counsel further clarified that Ng’undu Farmers Co-operative Society Ltd (in liquidation), the registered owner of Nairobi/Block 126/570, was not a party to the previous suit, and that the Applicant has never sued the Liquidator elsewhere. Therefore, the parties and subject matter in the current proceedings are distinct, and the doctrine of *res judicata* does not apply.
54. Addressing the claim that the Applicant had failed to attach auction notices, Counsel referred to the Supplementary Affidavit of Julius Joseph Gitau Njuguna sworn on 4th August 2025, which annexed as “JJN-3” a public notice from the Nairobi City County Government listing Nairobi/Block 126/570 among parcels scheduled for auction over unpaid land rates. This, Counsel submitted, is clear proof of the threat that prompted the present application.
55. Finally, Counsel rejected the assertion that the Applicant was uncertain as to whom to sue. It was reiterated that the suit is directed against Ng’undu Farmers Co-operative Society Ltd (in liquidation), whose Liquidator has not denied ownership of the larger Nairobi Block 126 parcel from which Nairobi/Block 126/570 was subdivided. Accordingly, Counsel urged the court to find that the Respondents were properly sued, that *res judicata* does not apply, and that the application for leave is procedurally sound and merited.

Analysis and Determination

56. Having considered the Motion, Affidavits and submissions, the issues that arise for determination are:

- i. Whether the Applicant should be granted leave to commence proceedings against the 1st and 2nd Respondents?*
- ii. Whether the Applicant is entitled to an order compelling the Official Liquidator and the Chief Land Registrar to produce a certified copy of the title deed for Plot Number 593 (Nairobi Block 126/570), or alternatively, the mother title and a status report on its subdivision?*
- iii. Whether temporary injunctive orders should issue restraining dealings with Plot Number 593 (Nairobi Block 126/570), pending determination of the matter?*

57. The Applicant seeks leave to commence proceedings against the 2nd Respondent as the 1st Respondent's official Liquidator. His plea in this respect is founded on **Section 66(1) (b)** of the **Co-operative Societies Act**, which provides:

“The liquidator shall, subject to this Act, have the following powers -to institute and defend suits and other legal proceedings by, and on behalf of, the society in his own name or office, and to appear before the Tribunal as litigant in person on behalf of the society.”

58. As well as **Section 432(2)** of the **Insolvency Act, Cap 53** which provides:

“When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate.”

59. It is not in dispute that the 1st Respondent is a society duly registered under the **Co-operative Societies Act, Cap 490**, Laws of Kenya. According to the 2nd Respondent, the society was placed under liquidation pursuant to **Section 62** of the **Act**, and he was duly appointed as its Liquidator in February 2008.

60. **Section 62** of the **Act** empowers the Commissioner for Co-operative Development to cancel the registration of a co-operative society. The effect of such cancellation is clearly articulated under **Section 63**, which provides:

“Where the registration of a co-operative society is cancelled, the society shall cease to exist as a body corporate from the date the order takes effect.”

61. Upon such cancellation, the society loses its corporate personality and can only act through its appointed Liquidator(s). This position is expressly provided under **Section 65** of the **Act**, which states:

“(1)If the registration of a co-operative society is cancelled under Section 61 or 62, the Commissioner may appoint one or more authorised insolvency practitioners to be the liquidator or liquidators of the society.”

62. The powers of a liquidator are set out under **Section 66(1)(b)** of the **Act** one of which includes:

“(b)to institute and defend suits and other legal proceedings by, and on behalf of, the society in his own name or office, and to appear before the Tribunal as litigant in person on behalf of the society”

63. It is notable that, despite the detailed provisions under the Act governing the liquidation of co-operative societies, there is no provision requiring a party to seek leave before instituting proceedings against a society under liquidation. This raises the question of whether the Applicant was right to invoke **Section 432(2)** of the **Insolvency Act** as the legal basis for seeking such leave.

64. In this regard, **Section 95** of the **Co-operative Societies Act** offers clear guidance and renders the Applicant’s reliance on the **Insolvency Act** misplaced. The section provides:

“Except as expressly provided by rules made under section 91, the Companies Act (Cap. 486), the Insolvency Act (Cap. 53) and the

***Registration of Business Names Act (Cap. 499)
do not apply to a co-operative society.”***

65. The “rules” referred to under **Section 95** are those made by the Cabinet Secretary for purposes of governing the administration and management of co-operative societies. There is therefore no statutory basis for applying the **Insolvency Act** to matters concerning co-operative societies under liquidation.
66. Taking a similar position, the court in **Ngokonyo & Another vs Liquidators, Kagaa Farmers Co-operative Society Limited (Environment & Land Case E026 of 2024) [2025] KEELC 3942 (KLR) (19 May 2025) (Ruling)**, dealing with a similar plea for leave to sue liquidators of a co-operative society, held that no such leave is required under the governing statute.
67. On the other hand, in **Gitere Kahuro Investments Limited & Another vs Kenya Planters Co-operative Union (In Liquidation) (Civil Suit E780 of 2022) [2025] KEHC 487 (KLR) (Commercial and Tax) (27 January 2025) (Ruling)**, the court reaffirmed that the applicable law in matters concerning co-operative societies in liquidation is the **Co-operative Societies Act** and not the **Insolvency Act**.
68. Accordingly, the prayer for leave to institute proceedings, having no basis in law is moot.
69. The next issue to determine is whether the Applicant is entitled to an order compelling the Official Liquidator and

the Chief Land Registrar to produce a certified copy of the title deed for Plot Number 593 (Nairobi Block 126/570), or alternatively, the mother title and a status report on its subdivision?

70. The Applicant, citing **Article 35** of the **Constitution** asks the court to compel the 1st-3rd Respondents to furnish him with a certified copy of the title deed for Plot Number 593 (Nairobi Block 126/570), or alternatively, the mother title and a status report on its subdivision. It is his case that this information is fundamental to the formulation, filing, and prosecution of the intended suit for adverse possession.

71. The Constitution guarantees every citizen the right of access to information. In this regard, **Article 35** of the Constitution provides that:

***“1)Every citizen has the right of access to -
a)information held by the State; and
b)information held by another person and required for the exercise or protection of any right or fundamental freedom.***

2)Every person has the right to the correction or deletion of untrue or misleading information that affects the person.

3)The State shall publish and publicize any important information affecting the nation.”

72. For purposes of actualizing **Article 35**, Parliament enacted the **Access to Information Act. Section 4** of the Act re-

affirms the right to access information whereas **Section 5** mandates a public entity to facilitate access to information held by it.

73. Under **Section 8**, a party who seeks information from a public office shall do so in writing providing particulars of what is sought. This was affirmed by the court in **Kenya Human Rights Commission & another vs Attorney General & another; Law Society of Kenya & another (Interested Parties) (Petition E179 of 2022) [2024] KEHC 15702 (KLR) (Judgment)** thus:

“A person seeking to access information held by the state or private body is in the first instance required to address the request to the designated officer under Section 7 of the Act and the request is made on an application under Section 8 (1) which provides details and sufficient particulars for the public officer to understand extent and nature of the information requested.

The public officer will under Section 9 process the application and make a decision on the application as soon as possible. Where the applicant does not receive a response to an application within the period stated in subsection (1), the application is deemed to have been rejected as provided under Section 9 (6) of the Act.”

74. In this case, the factual matrix raises two critical issues that weaken the Applicant's plea. First, the Applicant's claim rests on a single letter dated 10th June 2024 addressed to the Liquidator, with no evidence of acknowledgment, receipt, or follow-up to the Chief Land Registrar.
75. The **Access to Information Act** prescribes a clear administrative path that must be followed before judicial intervention. In any event the Applicant has not demonstrated inability to get records through the normal route, for example a search at the land's registry.
76. Second, and more fundamentally, the Applicant's own position undermines the basis of his request. While he seeks disclosure of a title for Nairobi Block 126/570, he concurrently concedes that no such title currently exists. The parcel, according to his own affidavit, is yet to be formally surveyed and excised from the parent property. As such, the Applicant's request borders on a speculative or exploratory inquiry rather than a legitimate invocation of the right to information. The upshot of the foregoing is that the same fails.
77. The last issue is whether temporary injunctive orders should issue restraining dealings with Plot Number 593 (Nairobi Block 126/570), pending determination of the suit.
78. The law on grant of interlocutory injunctions is provided for under **Order 40 Rule 1** of the **Civil Procedure Rules, 2010**. The same 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 if 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.”

79. The court in ***Giella vs Cassman Brown (1973) EA 358***, set out the pre-requisites for the grant of temporary injunctive orders thus:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction

will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

80. The Applicant in this case is expected to meet the three principles and surmount them sequentially. This was stated by the Court of Appeal in ***Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR*** thus:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:-

(a) Establish his case only at a prima facie level,

(b) Demonstrate irreparable injury if a temporary injunction is not granted, and

(c) Ally any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. (See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86). If the

applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between."

81. Beginning with the aspect of prima facie case, the same was defined in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others [2003] eKLR* thus:

"....So what is a prima facie case? I would say that in civil cases it is 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."

82. More recently, the Court of Appeal in the case of **Nguruman Limited vs Jan Bonde Nielsen & 2 others(supra)** while agreeing with the definition of a *prima facie* case in the **Mrao Case (supra)** went ahead to further expound as follows:

“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."

- 83.** The court will be guided by the foregoing principles as well as by the general principle that no definitive findings on law or facts should be made at this interlocutory stage.
- 84.** The Applicant contends that he has demonstrated a clear and arguable case based on longstanding possession and occupation of Plot Number 593 (Nairobi Block 126/570), which forms the basis of a claim for adverse possession. He states that his continued residence and improvements on the property support the existence of a legally cognizable interest worthy of protection.
- 85.** On the other hand, the 1st and 2nd Respondents assert that there is no genuine *prima facie case* for the court to consider. They contend that the claim for urgency and request for grant of interim relief is based on a manufactured, fictitious claim of threat of auction of property, and the parties named and listed in the Applicant's narrative are based on conjecture and speculation.
- 86.** Further, it was argued, there has been non-disclosure of relevant and material facts being several previous

proceedings over the suit property. Ultimately, it is urged, the entire Motion constitutes an abuse of process.

- 87.** It is trite that injunctive reliefs are equitable reliefs and an Applicant so seeking must come to court with clean hands. Indeed, as stated in **Caliph Properties Limited vs Barbel Sharma & Another [2015] eKLR:**

“Secondly, the injunction sought is an equitable remedy. He that comes to equity must come with clean hands and must also do equity.”

- 88.** First, on the claim of failure to disclose, the finding of the court must be in the positive. The Applicant did not, at the filing of the Motion disclose to the court that the suit property had been the subject of previous proceedings notwithstanding their nature and progress.

- 89.** Nonetheless, for the non-disclosure to be such that it disentitles a party to the exercise of judicial discretion in their favour, it must be material, that is, it must relate to facts which, if disclosed, would have had a bearing on the court’s assessment of the merits or the fairness of the proceedings.

- 90.** In determining whether there has been material non-disclosure, the Court of Appeal set the following directions in **Mary Wairimu Gikunju vs Republic & 3 others [2014] KECA 666 (KLR):**

“In determining whether the appellant was guilty of material non-disclosure, the Court has

to first consider if the undisclosed fact was material to the decision to grant leave in the 2nd application. In Brink's-Mat Ltd. -vs- Elcombe & Others (supra), it was held that whether a fact is material depends on the importance of that fact to the issue to be decided. Scrutton LJ in R-vs- Kensington Income Tax comrs exp princess Edmond de polgnac (1917) KB 486 held,

“...the material facts are those which it is material for the Judge to know in dealing with the application as made.”

[16] Secondly, it is imperative for the Court to take into account the motive or intention of the appellant's failure to disclose the 1st application. Hancox CJ. In Tiwi Beach Hotel Ltd -vs- Stamm - Civil Appeal No. 63 of 1990 held that in determining whether a litigant is guilty of material non disclosure it is important to consider his intention or motive. Hancox CJ. In distinguishing the decision of this Court in Owners of the Motor Vessel “Lillian S” -vs- Caltex Oil (Kenya) Ltd (1989) KLR 1 & R-vs- Kensington Income Tax comrs exp princess Edmond de polgnac (supra) held that the non-disclosure in the said cases were of a different nature from the one in Tiwi case. He stated that in the two cases, there was

clearly a motive to deceive by non-disclosure. In respect of Lilian S case he expressed himself as follows:-

“It followed in the Lilian S that the applicants for the warrant of the arrest of the ship had failed in their duty of candour to the Court. But it must have been plain to Caltex, and particularly to their employee Mr. Kariuki, that if they had revealed the true facts to the Judge, the court would never have given them the relief sought. So there is an obvious motive to deceive, by misrepresenting the true facts Caltex could obtain the arrest of the ship, which would be of immense advantage to them in pursuit of their claim.”

[17] Thirdly, the Court should also consider whether the appellant gained some advantage over the 3rd respondent by failing to disclose the existence of the 1st application. Kwach, JA in the Tiwi Case held,

“Secondly, even assuming for the purposes of argument only, that the existence of the agreements was a material fact, a matter over which I entertain a considerable degree of doubt, it has not been shown on the evidence that the respondent gained

some advantage over the appellant by failing to disclose their existence.”

91. As to the effect of non-disclosure, the Court of Appeal in ***Energy Regulatory Commission vs John Sigura Otido [2021] KECA 1060 (KLR)*** stated:

“27. Although the respondent filled a notice of withdrawal of the first suit on 7th March 2018, it was not until 9th May 2018 when the order of withdrawal of the suit was made. In his verifying affidavit to the statement of claim, the respondent stated:

“3. That there is no other claim pending and there has been no previous proceedings in any court between the claimant and the respondent over the same matter.”

28. Obviously the above deposition was not only false but amounted to perjury and constituted material non-disclosure. Whereas order 25 rule 1 of the Civil Procedure Rules grants liberty to a plaintiff by notice in writing to discontinue his suit, the notice ought to be served on all parties before any other suit is instituted. That was not done.

29. The learned judge did not condone the respondent’s conduct.

The learned judge expressed himself as follows:-

“The Court has considered the material non-disclosure and returns that the claimant is not deserving of the interim orders herein that the vacancy flowing from the claimant’s summary dismissal be preserved pending further orders by the Court as given on 30.30.05.2018 and issued on 05.06.2018.”

30. In view of that finding, grounds 15 and 16 in the memorandum of appeal that fault the learned judge for failing to appreciate that the respondent was guilty of abuse of court process and other procedural improprieties have no basis. We find and hold that the respondent’s conduct as stated above amounted to abuse of court process which the learned judge deprecated in his ruling dated 22nd June 2018.”

92. The Applicant has admitted to failing to disclose the previous suits when he filed the Motion. His explanation, in response, is that whereas indeed in **High Court Succession Cause No. 1568 of 1994**, a grant of letters of administration was issued in favour of Patricia Wanjiku Mwaura, and there was an appeal of the same, in **ELC Case No. 201 of 2017**, the court was categorical that notwithstanding the fact that the suit property was in issue, the doctrines of *res judicata* and *sub judice* were inapplicable.

93. He explained that in **ELC Case 201 of 2017**, this court granted his claim for adverse possession in respect of a different parcel, namely L.R. 209/9754/53 (Huruma). As regards **Miscellaneous Application No. E164 of 2024**, the same was never properly filed, served or prosecuted, and that **Misc. Application No. E107 of 2025**, is separate and distinct and has no bearing on the current application for leave.

94. Were these non-disclosures, then, material? The answer to that question depends on whether the principles of *res judicata* or *sub judice* are applicable, for it is these doctrines that embody the fundamental tenet that litigation must come to an end. The requirements to successfully plea *res judicata* have been settled. In the case of **John Florence Maritime Services Limited & another vs Cabinet Secretary for Transport and Infrastructure & 3 Others [2021] eKLR** the Supreme Court held as follows:

“For res judicata to be invoked in a civil matter the following elements must be demonstrated:

a) There is a former Judgment or order which was final;

b) The Judgment or order was on merit;

c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and

d) There must be between the first and the second action identical parties, subject matter

and cause of action. (See Uhuru Highway Developers Limited vs Central Bank of Kenya & others [1999] eKLR and See the decision of the Court of Appeal in Nicholas Njeru vs Attorney General & 8 others Civil Appeal 110 of 2011 (2013) eKLR.”

95. Starting with **Succession Cause No. 1568 of 1994** and the attendant appeal, as they dealt with the question of disputes between beneficiaries, and within the ambit of the family court, they cannot be said to be *res judicata* the present matter. As regards **Miscellaneous Application No. E164 of 2024**, the pleadings therein were not adduced and the court cannot make a positive finding in this regard.
96. Moving to **ELC No 201 of 2017**, the court notes that the suit property was indeed one of the parcels to which the Applicant sought ownership by way of adverse possession. However, his claim in that regard was as against Patricia Wanjiku Mwaura. That plea failed. His claim now is as against the liquidator Ng’undu Farmers Society Limited as the alleged owner of the suit property. This being so, the plea of *res judicata* is inapplicable.
97. Moving to *sub judice*, the same was discussed in **Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [2020] eKLR** which held as follows:

“The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as: "Before the Court or Judge for determination." The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

98. It being undisputed that the succession matters and its appeal as well as **ELC No 201 of 2017** have been concluded, this can only be with regards to **Misc No. E164 of 2024**. However, as aforesaid, the pleadings

herein were not adduced and no positive finding can be made in this regard.

99. It is noted that the Applicant himself referred to the case in **Beatrice Wambui Njuguna (supra)** in arguing against the claim for *res judicata*. It begs the question whether **Beatrice Wambui Njuguna (supra)** case dealt with the same property as the suit property herein. The court stated in part in **Beatrice Wambui Njuguna (supra)**:

“I have perused the pleadings herein and I note that the suit property was among the properties listed seeking determination of the questions in the amended originating summons dated 24th July, 2019 filed by the applicant/respondent against the proposed 3rd respondent in ELC Case No. 201 of 2017.

However, going by the authorities I have cited above, I am persuaded that the joinder of the proposed 3rd respondent in these proceedings would be necessary. This would enable the court to deal with all the issues once and for all. The proposed 3rd respondent was a party to ELC No. 201 of 2017, and it would only be fair that she is given a chance to defend/or make a claim in the instant proceedings... The proceedings in this case are hereby set aside pending further directions on the disposal of the case as a result of joinder by the 3rd respondent.”

- 100.** This is, therefore, a live proceeding before the court. However, it is unclear from this excerpt whether the suit property referred to in **Beatrice Wambui Njuguna (supra)** is the suit property in the instant proceedings, as the suit property has not been described in the said suit.
- 101.** ELC No 201 of 2017 had three suit properties, and it is not clear which specific property the court is referring to, and this court has not been furnished with any pleading that would make reference to the specific suit property. The claim of *sub judice* cannot therefore succeed at this stage. The non-disclosures cannot there be said to be material to warrant the court's refusal to consider the equitable injunctive relief sought.
- 102.** Moving to whether a *prima facie* case has been demonstrated, the court finds in the negative. The Applicant asserts a continuous, open, and exclusive occupation of the property. That fact is not contested by the Respondents. However, a *prima facie* case for purpose of adverse possession would be duration of continuous, open and exclusive occupation of a suit property against a registered title.
- 103.** The Applicant has not produced any title or an official search against the suit property, but invokes this court's jurisdiction to assist him procure a copy of the title to the suit property. As was already determined by this court in ELC No 201 of 2017, adverse possession can only be claimed against a registered title and without such a

registered title, there can be no *prima facie* case of adverse possession, as it is not ascertained who the registered owner of the property against whom the claim of adverse possession can be made.

104. Having failed to demonstrate a *prima facie* case, the court need not look into the other considerations. In the end, the court finds the Motion dated 10th June, 2025 to be unmerited. The same is dismissed with costs.

Dated, signed and delivered virtually in Nairobi this 27th day of November, 2025.

**O. A. Angote
Judge**

In the presence of;

Ms. Nyawira for 3rd Respondent

Mr. Muriuki for 1st and 2nd Respondent

Ms Kioko holding brief for Muchiri for Applicant

Court Assistant: Tracy