

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC LC NO. E438 OF 2024

TAITAS RUBIA KARIUKI

PLAINTIFF

VERSUS

ROBERT MUICHUA

DEFENDANT

**MICHAEL NGUGI KARANJA,
PETER NDUNG’U MUTIGA, AND
MARGARET NJERI WANYOIKE**

Suing on their own behalf and as the officials of
ZIMMERMAN SETTLEMENT

SCHEME SOCIETYINTENDED 2ND

DEFENDANT

RULING

1. What is before Court for determination are five applications.
For good organization, the Court will deal with them here
below in the order in which they were filed.

Application dated 28th October 2024

2. It is filed by the Plaintiff who seeks the following Orders:

a) Spent.

b) Spent.

c) That pending the hearing and determination of the suit, this Honourable court be pleased to issue an order of temporary injunction restraining the Defendant/ Respondent from entering, trespassing, occupying, taking possession of, developing, constructing on, transferring, assigning, sub-leasing or in any manner whatsoever interfering with the Plaintiff's ownership and possession of the suit property known as Nairobi/Block 123/86, measuring approximately 0.2115 Ha and located in Zimmerman within Nairobi City County, and the officer commanding Kasarani Police Station to supervise and ensure compliance.

d) That costs of this application be awarded to the Plaintiff/Applicant.

3. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that he is the registered owner of **Nairobi/Block 123/86** Zimmerman, hereinafter referred to as the 'suit property' as per Certificate of Lease issued on 29th February 2006. Further, that he has been living peacefully until recently when the Defendant trespassed and has deposited building materials thereon with the intention of developing the said suit property. He insists that unless stopped, the Defendant will trample on his ownership rights and cause him irreparable loss.
4. After hearing the said Notice of Motion application ex-parte on 28th October 2024, the Court directed that status quo be maintained in that no construction was to be undertaken on the suit property.

Application dated 5th November 2024

5. This application is filed by the Plaintiff where he seeks the following Orders:

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Ruling

a) Spent.

b) That the Honourable Court be pleased to issue summons to the contemnor to show cause why he should not be committed to civil jail for failing to comply with the orders of the court dated 28th October 2024.

c) That the Honourable court be pleased to commit the contemnor to civil jail for a period of (6) months for failing to comply with the orders of the court dated 28th October 2024.

d) That the officer in charge of Kasarani Police station /any other nearest police station with jurisdiction to ensure compliance of orders.

e) That the cost of this application be borne by the contemnor.

6. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that despite this Court's orders issued on 28th October 2024 stopping further acts of trespass and construction on the suit property, the

Defendant, despite service of the said orders has intentionally refused to comply and further proceeded with construction on the suit property.

7. The Defendant filed a joint replying affidavit to the two applications dated 24th October 2024 and 5th November 2024 respectively. He avers that he executed a Lease Agreement with David Ngumi Mwangi, George Kimuta Wanjau, Simon Mburu Gachomo & George Njogu Kimani the trustees of Zimmerman Youth Self Help Group and that prior to that, he carried out due diligence, including visiting the offices Zimmerman Youth Self Help Group, which confirmed to him that they are the legal owners of the suit property. Subsequently, he proceeded and occupied it as it was vacant. He avers that the Plaintiff has failed to disclose to this Honourable Court that there is an ongoing suit being **Milimani ELC No. 2363 of 2006**, between himself and others with regard to the ownership of the suit property.

Application dated 15th November 2024

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Ruling

8. This is the third application filed by the Plaintiff where he seeks the following Orders:

a) Spent.

b) That this Honourable Court be pleased to issue an Order directing the Officer Commanding Kasarani Police Station (OCS) to supervise and ensure compliance with the orders of Honourable Lady Justice L. Mbugua issued on 28th October 2024, that the status quo prevailing in respect to the Suit Property known as Nairobi/Block 123/86 measuring approximately 0.2115 Ha, located in Zimmerman within Nairobi City County be maintained and for avoidance of doubt, no construction to be undertaken on the Suit Property.

c) That costs of this Application be in the cause.

9. The application is premised on grounds on its face and on the Plaintiff's affidavit in which he reiterates that he is the registered owner of the suit property and that the Defendant

has trespassed thereon despite this Court's status quo orders issued on 28th October 2024. Further, that police officers from Kasarani Police Station advised him to seek from Court express orders for police assistance in enforcing the aforementioned status quo orders.

Application dated 7th May 2025

10. This is an application filed by the Intended 2nd Defendant who seeks the following Orders:

a) That Michael Ngugi Karanja Peter Ndung'u Mutiga, and Margaret Njeri Wanyoike (Suing on their own behalf and as the officials of Zimmerman Settlement Scheme Society) are enjoined in these proceedings as the 2nd Defendant.

b) That this Honorable court grants such further orders as it deems fit and just in the unique circumstances of this case.

c) That the cost of this application be provide for.

11. The application is premised on grounds on its face and on the supporting affidavit of Ndungu Mutiga, who identifies himself as the special committee member of the intended 2nd Defendant. He avers that this dispute revolves around ownership of **LR Nairobi/Block 123/86** which is also the subject of **ELC No. 2363 of 2007** in which the intended 2nd Defendant is claiming an interest under the doctrine of adverse possession on behalf of its members, who include the Plaintiff herein and who is sued as the 31st Defendant in the said matter, thus the intended 2nd Defendant is a necessary party as its presence will enable the Court to effectually and completely adjudicate upon and settle all the questions in the suit.

12. The application is opposed by the Plaintiff who denies the allegation that the suit property is subject in **ELC No. 2363 of 2007**. Further, that intended joinder of the 2nd Defendant is a deliberate act intended at convoluting issues herein and

that the intended 2nd Defendant does not satisfy the legal threshold for joinder.

Application dated 5th August 2025

13. This is an Application filed by the Plaintiff who seeks the follow Orders;

a) Spent.

b) Spent.

c) That this Honourable Court be pleased to find

and

hold that the Defendant/Respondent, Robert Muichua, is in contempt of this Honourable Court's Orders issued on 24th June 2025.

d) That accordingly, this Honourable Court be pleased to mete out appropriate punishment to the said contemnor for contempt of this Honourable Court's Orders issued on the 24th June 2025, including but not limited to detaining him in prison for a period of six (6)

Months or such period that this Honourable Court deems just and appropriate.

e) That this Honourable Court be pleased to issue any other or further orders of the court geared towards protecting the dignity and authority of the court.

f) That the costs of this application be provided for in any event.

14. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that despite the clear and elaborate Orders of this Court, the Defendant has proceeded to illegally enter the suit property in clear disobedience and defiance of this Court orders despite being aware of the existence of the said Court's orders issued on 24th June 2025. He insists that unless this Court urgently intervenes and grants the orders sought, the Court Orders of 24th June 2025 will continue to be disobeyed by the Defendant with impunity hence exposing this Court to ridicule and disrepute.

15. The application is not opposed.
16. Parties only filed submissions with regard to the application for joinder.

Submissions

17. The Plaintiff submits that the Intended 2nd Defendant has not demonstrated their stake in the matter as their sole argument that the suit property is the subject matter in **ELC No. 2363 of 2007** is without basis since they did not produce sale agreements or any documents to establish their interest in the said suit property. Further, that the alleged prejudice they are likely to suffer if not joined is more speculative, than it is real. To buttress his averments, he relied on the following decisions: **Wakula v Hege; Kiboi & 7 Others (Intended Interested Party) [2025] KEELC 6875 (KLR) Mungai & 2 Others v Kanyotu and Ndungu (Proposed Interested Party) (Environment and Land Case E002 of 2025) [2025] KEELC 6587 (KLR) (29 September 2025) (Ruling)**.

18. On their part, the Intended 2nd Defendants submit that they have shown a direct and legitimate interest in the suit property and that they can be joined under Order 1 Rule 10 (2) as a necessary party for complete adjudication of all issues.

Analysis and Determination

19. Upon consideration of the five listed applications including the respective affidavits and rivalling submissions, the following are the issues for determination:

- **Whether the Plaintiff has established the threshold for grant of a temporary injunction restraining the Defendant from interfering with Nairobi/Block 123/86.**
- **Whether the Defendant is in contempt of this Court's Orders issued on 28th October 2024 and on 24th June 2025 respectively.**

- **Whether the Intended 2nd Defendant has demonstrated a stake in the matter to warrant joinder?**

20. On the first issue, the Plaintiff seeks an interlocutory injunction to restrain the Defendant from interfering with the suit property pending the outcome of the suit, which is opposed by the Defendant. In line with the principles established in the case of **Giella v Cassman Brown & Company Limited (1973) E A 358**, I will proceed to decipher whether the Plaintiff has established a prima facie case to warrant the Orders as sought. The Plaintiff claims to be the registered proprietor of the suit property and has annexed a Certificate of Title to that effect. He avers that the Defendant has invaded the suit property, deposited building materials thereon and it is wasting it away. Looking at the documents presented, I note the Plaintiff is the registered proprietor of the suit property. The Defendant has not denied that he has trespassed on suit property and deposited building materials thereon. From these acts of the

Defendant, I opine that it would be pertinent if the substratum of the suit was preserved. In that regard, I find that the Plaintiff has indeed established a prima facie case to warrant the Orders of interlocutory injunction as sought. Since the Plaintiff is the registered proprietor of the suit property, I find that he will suffer irreparable harm which cannot be compensated by way of damages if the Defendant persists in interfering with the said suit property and the balance of convenience tilts in favour of granting an injunction.

21. On the second issue, the Plaintiff has alleged that the Defendant is in contempt of this Court's Orders on the 28th October 2024 and 24th June 2025 respectively. The Defendant did not oppose the application seeking to cite him for contempt.

22. In **Wildlife Lodges Limited v Narok County Council & 3 Others [2011] eKLR** the Court of Appeal stated that:

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.....”

23. The Court of Appeal held follows in the case of **Mutitika v Baharini Farm Ltd [1985] eKLR**;

“In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases.”

24. I note this Court granted the aforementioned Orders of status quo but it has emerged that the Defendant despite being aware of the said Orders, and participating in proceedings herein, continued to defy them by putting construction materials on the suit property. It is trite that Court Orders should be respected irrespective of whether they are favourable or not. Since the Defendant never denied that he acted in Contempt of the aforementioned Orders of this Court, I find that Robert Muichua, is in contempt of this Honourable Court's Orders issued on 28th October 2024 and 24th June 2025 respectively.

25. On the third issue, the Intended 2nd Defendant seek joinder on the basis that the suit property is subject in **ELC No. 2363 of 2007** in which it is claiming an interest over the said suit property, on behalf of its members, under the doctrine of adverse possession. It contends that the Plaintiff is sued in the ELC No. 2363 of 2007 as the 31st Defendant.

26. The Plaintiff on its part insists that they have not demonstrated interest in this suit to the juridical test since they did not produce documents to prove ownership of the suit property.
27. On joinder, Order 1 Rule 10 (2) of the Civil Procedure Rules, states as follows:

“The court may at any stage of the proceedings, either upon, or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

28. In **Meme v. Republic [2004] KLR**, it was held that joinder of parties will be permissible:

“(i) Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings;(ii) Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and(iii) Where the joinder will prevent a likely course of proliferated litigation.”

29. In this instance, the intended 2nd Defendant through its Special Committee member one Ndungu Mutiga, claims that this dispute revolves around ownership of **LR Nairobi/Block 123/86** that is also the subject of **ELC No. 2363 of 2007**, in which the intended 2nd Defendant is claiming an interest under the doctrine of adverse possession on behalf of its members and is a necessary party as its presence will enable the Court to effectually including completely adjudicate upon and settle all the questions in the suit. I note the intended 2nd Defendant is an association. Further, it is trite that in a claim for adverse possession each party has to prove how they

entered a parcel of land and have openly and notoriously used it.

30. However, based on the facts before me while relying on the legal provisions cited including decision quoted, I find that the intended 2nd Defendant does not fit the criteria for a Defendant in this matter. Further, it is not a necessary party nor will its presence enable the Court to completely adjudicate on the matters in dispute. In the foregoing, I find the application for joinder unmerited and will dismiss it.

31. In the foregoing, I find the Plaintiff's Notice of Motion applications dated 28th October, 2024, 5th November, 2024 and 5th August, 2025 merited and will allow them. I find the Plaintiff's Notice of Motion application dated the 15th November, 2024 overtaken by events. Further, I find the Intended 2nd Defendant's application dated the 7th May, 2025 unmerited and will disallow it.

32. Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 1ST
DAY OF DECEMBER, 2025**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Ms Kabinu for Defendant

Ms Wangechi for Shago for Applicant

Kenyatta for Interested Party

Court Assistant: Joan