

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC LAND CASE NO. E036 OF 2025

BOHEMIAN FAIRTRADE SELF HELP GROUP

**Suing through their registered officials: SOLOMON OMMANI
(Chairman), IBRAHIM OMARE OMBASA (Secretary), WYCLIFF
ODHIAMBO WAMALWA (Treasurer)**

.....**PLAINTIFF/APPLICANT**

VERSUS

ABDUL

AZIZ

AMIN.....DEFENDANT/RESPONDENT

RULING

1. Before me for determination is a Notice of Motion dated 24th July, 2025 brought pursuant to the provisions of Order 40 rules (1) and (2) Order 50 rule (1) of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, and all enabling provisions of the law in which Plaintiffs/Applicants sought for orders of injunction restraining the Defendant/Respondent, his agents, servants or any other party acting under his instruction from entering into, remaining on, fencing, subdividing or such other action that interferes with the ownership rights in titles LR Naivasha/Maraigushu Block 10/991, and LR Naivasha/Maraigushu Block 10/358- 373 (Kedong), pending the hearing and determination of the suit.
2. The Applicant also sought that Officer Commanding Police Station (OCS) Kongoni Police Station enforce the orders and for costs of the Application.
3. The Application was supported by the grounds therein and the Supporting Affidavit of an even date sworn by Solomon Ommami, the chairman of the Plaintiff/Applicant herein who deponed that the Applicant was the registered proprietor of the suit parcels of land and was affiliated to the parent company known as "Bohemian Flowers Company Limited" which was also known as "Oserian Fairtrade Self Help Group" before change of

ownership. That The Applicant was previously also known as “Oserian Flowers Development Co. Ltd.”

4. That the land ownership documents were initially in the name of “Oserian Fairtrade Self Help Group” wherein the transfer had been done to Bohemian Fairtrade Self Help Group the Applicant herein after its registration.
5. That the Plaintiff/Applicant had been in physical and legal control of all the suit parcels since their acquisition. However, from early July 2025, the Applicant started getting reports that some strangers had been traversing the suit premises their authority wherein on 15th July 2025, the said strangers started taking measurements on the suit premises and erecting fences. That it had been after conducting due diligence, that they had found that it had been the Respondent who had had been responsible for the trespass.
6. That when they reported the trespass to the DCI offices in Naivasha, they discovered that the Respondent had also made the same report to the DCI. That they had produced their documents of ownership for which was not the case with the Respondent who could not substantiate his claims. That on 22nd July 2025, some trespassers who were arrested also informed the police that they had been instructed to enter the suit premises by the Respondent.
7. That Applicant’s preparations to develop the suit premises had been halted until the uncertainty that had been occasioned by the Respondent was resolved. That accordingly, the Applicant stood to suffer damages if the said strangers continued to interfere with the suit premises. That an injunction would thus suffice to deter the Respondent from fencing the land and probably selling the same to innocent third parties wherein litigation on ownership would get more and more complicated with additional interested parties. That the Respondent and his gang who were marauding and intimidating the Plaintiff/Applicant’s officials and employees should be stopped from interfering with the suit parcels of land.

8. .In response and in opposition to the Applicant's Application, the Respondent vide his filed a Replying Affidavit which was sworn on 29th September 2025 by Abdul Aziz Amin, deponed that sometimes in the year 2010 his deceased father entered into a sale agreement with five individuals, one of whom was called Irungu and who was known to his father, and which persons were operating under Oserian Fairtrade Self Help Group, to buy 17 plots from the main land being Naivasha/Maraigushu Block 10 (Kedong), at a purchase price of Ksh.12,200,000/=. The persons had been introduced to his father by a broker named Geoffrey Kiiru Kinyanjui.
9. That nonetheless, despite the individuals (group) indicating that they would first pay half the amount being Ksh. 12,100,000/= (**sic**) then pay the balance after obtaining the consent of the Land Control Board, they had only paid a sum of Kshs. 3,600,000/=. That unfortunately, his father became sick and proceeded to India to seek medication from the year 2011 to 2013. Upon his return in the year 2013, he was still too weak and when he went to Naivasha in the year 2014, he found that land parcel No. Naivasha/Maraigushu Block 10 (KEDONG) had been fraudulently transferred and subdivided by the broker Geoffrey Kiiru Kinyanjui, one Daud Mohamed and in collusion with the Group. That the Plaintiff/Applicant herein was a stranger to them because they only knew Oserian Fairtrade Self Help Group (the group) which has since disappeared.
10. That his father had lodged a complaint at the DCI headquarters in Nairobi leading to the arrest of the broker, one Geoffrey Kiiru Kinyanjui, a director of Longonot Dairies Limited, on 16th June, 2014 who had admitted to having stolen the plots by fraudulently transferring them to himself. He had also informed the police that Oserian Fairtrade Self Help Group had gone under.
11. That subsequently, his father had filed a case in court against the fraudsters Geoffrey Kiiru Kinyanjui and Daud Mohamed vide Nakuru High Court Civil Case No. 57 of 2014. That further, his father had started

looking for Oserian Fairtrade Self Help Group and an entity by the name Masada, which had paid some money to him. That efforts to locate Oserian Fairtrade bore no fruits. That his father had then placed a caution on the land and obtained orders of injunction prohibiting any dealings in respect thereto.

12. That in the year 2019 his father had taken back his 17 plots and sold them to several individuals leaving 5 acres. That his father passed away in the year 2022, leaving him with instructions, as his eldest son, to look after the land and follow up on payment of the remaining 5 acres. That later he visited the land registry at Naivasha, and was shocked to find out that the land had been transferred to Bohemian Fairtrade Self Help Group, the Plaintiff/Applicant herein without his knowledge despite there having been an order prohibiting any transactions or transfer in relation to the said property. That the said illegal transfer had been affected by the Land Registrar by the name Madam Karani.
13. That subsequently, he had gone to the DCI Naivasha who carried out their investigations and established that Oserian Fairtrade Self Help Group had only paid a sum of Kshs. 3,600,000/= the land, instead of the agreed purchase price of Ksh. 12,200,000/=. That the group had then taken advantage of his father's absence to fraudulently transfer the land to themselves in collusion with Geoffrey Kiiru Kinyanjui and Daud Mohammed. That unfortunately, when the DCI looked for the 5 individuals connected to the fraud and whose names had been fraudulently entered into the Green Card, only one by the name Irungu was found. That the said Mr. Irungu stated that his name had been registered in the green card by mistake.
14. He deponed that whereas his father had sold the 17 plots because Oserian Fairtrade had not paid, the said group had taken advantage of his sickness and absence. That in the year 2012, his father had started preparing plot certificates for purposes of selling the same. He deponed that one land registrar by the name Nyanweso had been given 200 plots illegally by Mr. Kinyajui. That the Group had disappeared only to resurface

in the year 2025 when they knew that his father was no longer there and begun placing beacons on the land. He listed the plots that his father had sold as Naivasha/ Maraigushu Block 10/358-374 (Kedong) stating that parcel No. Naivasha/ Maraigushu Block 10/991 (Kedong) was not sold.

15. He urged the orders sought for by the applicants should not issue as they were not the proprietors of the suit premises because they had fraudulently acquired the alleged titles. That the Application herein should be dismissed with costs.
16. In a rejoinder, the Plaintiff/Applicant, through its Further Affidavit sworn on 6th October, 2025 by its Chairman Solomon Ommani, deponed that as it stood, the Plaintiff/Applicant was holding original title documents that had not been impugned in any manner whatsoever irrespective of the Respondent's long averment.
17. That the Respondent, in an attempt to confuse the Court while clutching straw had refused to address the matters raised in the immediate application. That the Respondent had given narratives dating back to the year 2010 that involved persons who were not subject of the instant litigation, some of who were long deceased, when he ought to have been telling the court the fate of his previous attempts to claim the suit premises. That despite allegations that the land belonged to his father, the Respondent had not evidenced his capacity to make claims on behalf of the estate.
18. That most of the allegations by the Respondent were pure hearsay which were over 12 years old and caught up by the limitation of actions act and had no probative value. That the Applicant herein was the successor in title of Oserian Fairtrade Self Help Group. That titles that had initially been issued to the former had been re-issued to the Applicant wherein the Respondent had no capacity to question the bonafide and authenticity of their titles as he was neither a landowner, legal representative of the former land owner, a land official or an officer from the Directorate of Criminal Investigations (DCI) investigating their title but was a busybody with zero claim to the land in his own right.

19. He deponed that the Respondent was just a fraudster with zero connection to the land, was just tagging at the tailcoats of his late father but could not on his own two feet substantiate any of his own allegations but was bent on maligning Land registrars who are not parties to the instant suit. That a party should not be allowed so much latitude to deviate from a very concise claim and stray into wild territory to avoid mutating the claim.
20. That the Respondent had introduced an allegation that there had been a case filed at the Nakuru High Court being Civil Case No. 57 of 2014 without attaching the pleadings and showing the nexus between the said case and the instant matter. That in any case a quick perusal of the records of the court at case tracking System (Judiciary online portal) shows that the said matter was concluded way back on 11th December, 2019 with a dismissal where the Respondent was not even a party. He deponed that at the interim level, they had made out a prima facie case and that the other issues could be canvassed at main trial.
21. On 14th October, 2025, directions were taken for the dispensation of the Application through written submissions herein summarized as follows:

Plaintiff/Applicant's Submissions

22. In its submissions dated 17th October, 2025, the Plaintiff/Applicant submitted arguments strongly supporting their application and challenging the Respondent's claims, primarily focusing on the Respondent's lack of locus standi (and the weakness of their defense).
23. Their submissions had been that all the 18 parcels of land (the suit premises) have title deeds in the Applicant's name, and none were in the Respondent's name.
24. The Applicant argued that for the Respondent to have any basis for his claims, he needed to establish a credible link to his alleged deceased father, but had failed to do so. That the Respondent had he failed to

identify his alleged father by name, prove that his father was a party to a relevant court case touching on the suit premises, prove his father's death, confirm his appointment as the legal representative of his father's estate, confirm his appointment as the owner or person in charge of the suit property through the estate and show the current status of the court cases he had casually mentioned and the outcome of any alleged fraud investigation.

25. That there had been procedural deficiencies and lack of a Defence in the sense that the Respondent's Replying Affidavit had failed to name his alleged father or show any relevance or nexus between the current case and the other case he was citing/ referred to. That the Respondent's documents were improperly before the court as they were allegedly unpaid for (in the CTS) and his advocate's position was not regularized and lastly that the Respondent had not neither filed a Defence or Counterclaim, despite the timelines being surpassed, showing a lack of seriousness in the litigation.
26. The Applicant sought for the court to consider whether the balance of convenience lies with the party holding clean titles and physical possession (Applicant), or with a "phantom claimant" who has unpaid documents and lacked the locus standi (Respondent). They submitted that they would suffer irreparable harm were the Respondent allowed to continue trespassing, subdividing, and alienating the suit premises during the case.
27. That in the circumstance, their application was unopposed and ought to be allowed with costs.

Defendant/Respondent's Submissions

28. The Respondent via his submissions dated 10th November 2025 reiterated the contents of his Replying Affidavit verbatim before placing reliance in the decided case of **Arthi Highway Developers Limited v West End Butchery Limited & 6 Others [2015] KECA 816 (KLR)**

where it had been held that that a fraudulently obtained title deed was defeasible.

Determination.

29. I have considered the Applicants' application, its opposition, the submissions by parties, the appropriate law as well as the authority herein cited.

30. Subsequently, the court has been moved under Certificate of Urgency, by the Applicant, to issue a temporary injunction against the Respondent restraining him, his agents, servants or any other party acting under his instruction from entering into, remaining on, fencing, subdividing or such other action that interferes with the ownership rights in titles LR Naivasha/Maraigushu Block 10/991, and LR Naivasha/Maraigushu Block 10/358 to 373 (Kedong), pending the hearing and determination of the suit.

31. At this stage, the Court is only required to determine whether the Applicants are deserving of the Orders sought. The Court is not required to determine the merit of the case.

32. Accordingly, the issue that arises for determination herein is whether an interim order of injunction should issue.

33. The celebrated case of **Giella vs Cassman Brown (1973) EA 358** sets out conditions for the grant of an interlocutory injunction as follows: -

- i. Is there a serious issue to be tried (prima facie case)?
- ii. Will the Applicant suffer irreparable harm if the injunction is not granted?
- iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience").

34. On the first issue as to whether the Plaintiff/Applicant in the instant matter has made out a prima facie case with a probability of success, I am

guided by the case of **Mrao vs First American Bank of Kenya Limited & 2 Others (2003) KLR 125**, where a prima facie case was described as follows:

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case 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.”

35. In their application dated 24th July, 2025, the Applicant herein seeks the injunctive orders against the Respondent for reason that it was the registered proprietor of the disputed land parcels. That previously, it was known as "Oserian Flowers Development Co. Ltd." and was affiliated with its parent company, "Bohemian Flowers Company Limited," which was also known as "Oserian Fairtrade Self Help Group." That the initial land documents were in the name of "Oserian Fairtrade Self Help Group" before the transfer was completed them. That they have been in physical and legal control of the suit parcels since their acquisition up to early July 2025, when they began receiving reports of strangers traversing the property wherein on 15th July 2025, these individuals started taking measurements and erecting fences on their land. That upon conducting due diligence, they discovered that the Respondent was responsible for this trespass.

36. In response, the Respondent's argument had been that his deceased father entered into a sale agreement with five individuals operating under Oserian Fairtrade Self Help Group (the Group), introduced by a broker, Geoffrey Kiiru Kinyanjui, to sell 17 plots from the main parcel Naivasha/Maraigushu Block 10 (Kedong) for Ksh. 12,200,000/= . That the Group only paid Ksh. 3,600,000/= . That his father became ill and went to India for treatment from the year 2011 - 2013 wherein upon his return, in 2014, he found that the main parcel of land had been fraudulently

transferred and subdivided by the broker (Kinyanjui), one Daud Mohamed, and the Group.

37. That a complaint was lodged at the DCI headquarters in Nairobi, leading to the arrest of the broker (Kinyanjui), who allegedly admitted to the theft and fraudulent transfer of the plots. Subsequently his father filed Nakuru High Court Civil Case No. 57 of 2014 against the fraudsters (Kinyanjui and Mohamed) and also placed a caution on the land. That his father then took back his 17 plots and sold them to several individuals, leaving 5 acres unsold. His father passed away, leaving the Respondent (his eldest son) with instructions to look after the land and follow up on the payment for the remaining 5 acres.
38. That when the Respondent later visited the Naivasha land registry, he was shocked to find the land had been transferred to the Plaintiff/Applicant, Bohemian Fairtrade Self Help Group, despite there existing prohibitory court orders. He reported the matter to the DCI Naivasha, whose investigation confirmed that Oserian Fairtrade had not paid the full price, and that they had taken advantage of his father's absence to fraudulently transfer the land with Kinyanjui and Mohamed.
39. That the Group disappeared and only resurfaced in 2025 after his father's death wherein they began placing beacons on the land. His argument had been that Naivasha/Maraigushu Block 10/358-374 had been sold leaving out parcel No. 991. He urged the court not to issue the orders sought by the Applicant because they are not the lawful proprietors of the suit premises, having fraudulently acquired the alleged titles. He prayed for the dismissal of the Application with costs.
40. There is no dispute that the suit property herein being LR Naivasha/Maraigushu Block 10/991, and LR Naivasha/Maraigushu Block 10/358- 373 (Kedong), are registered to the Plaintiff/Applicant meaning that as it stands, the Plaintiff/Applicant is the registered proprietor of the said suit properties wherein it is conferred with all rights, privileges and appurtenances thereto, free from all other interests and claims, which

rights, privileges and appurtenances are not liable to be defeated except as provided in the Act.

41. The rights of a proprietor are set out in Section 25 of the Land Registration Act, which provides as follows.

“The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by order of court shall not be liable to be defeated except as provided in this Act and shall be held by the proprietor, together with all privileges thereto, free from all other interests and claims whatsoever, but subject:-

- a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any shown in the register, and*
- b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.”*

42. Section 26 (1) of the Act provides that the certificate of title is to be taken as conclusive evidence of proprietorship Section 26 (1) provides:-

“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate and the title of that subject to challenge, except

- a. on the ground of fraud or misrepresentation to which the person is proved to be a party, or*
- b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme”.*

43. The Respondent has argued and asserted that the Plaintiff/Applicant's title was illegally and unlawfully procured and therefore cannot be deserving of protection under the law. However, there is no evidence that the Government has recalled and/or revoked the title. Both the Land Registration Act at Section 26 (1) that provides for the indefeasibility of title, and Article 40(6) of the Constitution envisage that where a registered title is impugned on the grounds set out in the provisions, that due process would be followed to have such title revoked, cancelled and/or annulled. The courts have in a series of cases in the recent past held that due process has to be followed before a registered title can be revoked on the grounds of having been fraudulently or irregularly issued.
44. The Plaintiff/Applicant having demonstrated that it was the registered owner of the suit properties wherein it had been issued with titles, prima facie its titles are indefeasible and the burden shifts to the Respondent to show or demonstrate that the titles are challengeable within the provisions of the law.
45. Quite clearly it is not possible to make a final determination at this interlocutory stage on the validity of the Plaintiff/Applicant's title but the mere proof that it holds duly registered certificates of title which on the face of it were properly acquired, is sufficient to lead the court to hold that they have established a prima facie case.
46. It has also not been disputed that the Applicants herein are in possession and occupation of the suit premises. By not granting orders of injunction so sought in a situation like this, there could be an eviction which at this interlocutory stage would be premature as it would cause irreparable harm to the Applicants.
47. Since at this stage the court is not required to make final findings of contested facts but to weigh the relative strength of the parties cases as observed by Lord Diplock in **American Cyanamid Co. vs Ethicon Limited (1975) 1 ALL ER 504; (1975) A.C. 396 HL at 510** where he stated as follows:

"It is no part of the Court's function at this stage of the litigation to try and 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. These are matters to be dealt with at the trial.'"

48. I find that the balance of convenience tilts in favour of granting the injunctive orders sought and therefore the order that best commends itself in the circumstances of this case is an order of status quo as in land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of **Mugah -v- Kunga [1988] KLR 748**, in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions Gazette Notice No. 3461/2025 Practice Direction No. 23(I) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case. To this effect, I would therefore interfere in a limited manner by clearly defining the status quo maintained herein to the effect that:

- i. The order of status quo to be maintained by all with the understanding that the Plaintiff/Applicant' is in possession and occupation of the suit property Title No. LR Naivasha/Maraigushu Block 10/991, and LR Naivasha/Maraigushu Block 10/358- 373 (Kedong), as at the time of filing the instant suit and therefore there shall not be any eviction and/or disruption of the said occupation.
- ii. The Applicants shall also not deal with the land adversely.
- iii. Such status quo is to be maintained by all parties until the matter is finally heard and determined.

- iv. Officer Commanding Station (OCS) Kongoni Police Station is directed to ensure compliance with the orders.
- v. The costs of the application shall be in the cause.
- vi. Parties to comply with the provisions of Order 11 of the Civil Procedure Rules within the next 21 days for the hearing of the main suit herein.

Dated and delivered via Microsoft Teams at Naivasha this 11th day of December 2025.



M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE