

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCLC NO. E528 OF 2024

GERALD CHEGE GITAU.....1ST

PLAINTIFF/APPLICANT

SIMON WAINAINA KARIUKI.....2ND

PLAINTIFF/APPLICANT

ELIJAH NYAKUNDI ANYONA.....3RD

PLAINTIFF/APPLICANT

-VERSUS-

GATUNDU AND MANGU

FARM COMPANY

LIMITED.....1ST

DEFENDANT/RESPONDENT

NAIROBI CITY COUNTY

GOVERNMENT.....2ND

DEFENDANT/RESPONDENT

**THE NATIONAL LAND COMMISSION.....3RD DEFENDANT/
RESPONDENT**

THE CHIEF LAND REGISTRAR.....4TH

DEFENDANT/RESPONDENT

DIRECTOR OF SURVEY.....5TH

DEFENDANT/RESPONDENT

ETHICS AND ANTI-CORRUPTION

COMMISSION.....6TH

DEFENDANT/RESPONDENT

RULING

1. Before this court is the notice of motion dated 18th December, 2024 filed by the plaintiffs/applicants, and it is expressed to be brought under **Sections 3 and 13** of the **Environment and Land Court Act, Sections 1,1A, 3A and 63 (c)** of the **Civil Procedure**

Act and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders:-

a. Spent.

b. That this honourable court be pleased to issue an order of temporary injunction restraining the defendants from selling, leasing, charging, surveying, sub dividing, registering any subdivisions, registering any transfers or in way dealing with the records of L.R. 14847 (I.R 51169) or any of its sub divisions pending the hearing and determination of this application.

c. That this honourable court be pleased to issue an order compelling the 1st and the 4th defendants to immediately surrender the original grant of L.R 14847 (I.R 51169) and any resultant subdivisions of the same to the 6th defendant pending the hearing and determination of this application.

d. That this honourable court be pleased to issue an order of temporary injunction restraining the defendants from selling, leasing, charging, surveying, subdividing, registering any sub divisions, registering any transfers or in way dealing with the records of L.R 14847 (I.R 51169) or any of its subdivision pending the hearing and determination of this suit.

e. That this honourable court be pleased to issue an order compelling the 1st and the 4th defendants to immediately surrender the original grant of L.R 14847 (I.R 51169) and any resultant subdivisions

of the same to the 6th defendant pending the hearing and determination of this suit.

f. That the honourable court be pleased to make any such further orders and issue any other relief within its powers it deems to be in the interest of justice.

g. That costs of this application be provided for.

2. The application is premised on the grounds *inter alia* that the plaintiffs/applicants are the property owners of a number of plots in Kahawa West, Jua Kali area. The application was supported by the affidavit the 1st plaintiff/applicant sworn on 19th December, 2024. The 1st plaintiff/applicant deposed that he has been a resident of Kahawa West, Jua Kali area since the year 1994 having purchased the same from Mathare Valley Distributors Co. Ltd. Equally, that his co-plaintiffs/applicants have been active participants of community initiatives and that they have been following up the process of obtaining legitimate title documents for the Kahawa West neighbourhood.
3. The 1st plaintiff/applicant deposed that the land buying companies did not have any title documents, and instead issued them with share certificates. However, it later emerged that the said companies were relying on a fraudulent title as the property was

public land. He deposed that **L.R. No. 14847(I.R 51169)** (hereinafter referred to as the suit property) was comprised in LR. 8569 measuring approximately 875 acres, with the last subdivision being L.R 8569/5 measures approximately 354 acres. The 1st plaintiff/applicant deposed that the suit property underwent numerous subdivisions and transfers but was never transferred to the 1st defendant/respondent. That on 1st July 1989, after the register of L.R. 8569 was closed, the 1st defendant/respondent unlawfully obtained a grant for approximately 70.61 acres from LR. 8569/5 and L.R 8569/6.

4. The 1st plaintiff/applicant further deposed that owing to the Court of Appeal decision in Nairobi Civil Appeal No. 8 of 2014 Ndorongo Gatheru & Gatundu and Mangu Farm Company Limited v Norman Kariuki & 30 Others [2017] eKLR, this court ought to cancel the title forthwith to forestall further fraud. Further, that on 29th May, 2023, the 3rd defendant/respondent published a public notice that it would regularize the ownership of L.R 8569/5 which is public owned land by the 2nd defendant/respondent.
5. It was deposed that in an attempt to defeat the said regularization, the 1st defendant/respondent working in cahoots with corrupt government officers have commenced the process of

subdivision, and have made attempts to sell the same including land set aside for public amenities. That instead of cancelling the fraudulent title, the 4th and 5th defendants/respondents have been facilitating the 1st defendant/respondent's in further committing fraud.

6. The application was further supported by the affidavit of Cecilia Koigu, the Chief Officer- Lands of the 2nd defendant/respondent sworn on 28th January, 2025. The 2nd defendant/respondent deposed that in the year 1995, a suit was instituted vide Nairobi HCCC No. 2794 of 1995 seeking adverse possession of LR. No. 8569/5 which was dismissed, and that the 1st defendant/respondent being dissatisfied with the judgment, lodged an appeal at the Court of Appeal vide Nairobi Civil Appeal No. 8 of 2014 Ndorongo Gatheru & Gatundu and Mangu Farm Company Limited v Norman Kariuki & 30 Others.
7. It was deposed that the Court of Appeal heard the suit on merit and held that LR. No. 8569/5 reverted to the government under the doctrine of *bona vacantia*. Further, that on 21st May, 2024 the 3rd defendant/respondent issued a notice of its intention to regularize ownership of L.R No. 8569/5.
8. The 2nd defendant/respondent deposed that in ELCLC No. E350 of 2024, the court issued a temporary order of injunction restraining

the 2nd and 3rd defendants/respondents from further dealing with the land pending the determination of the application dated 23rd August, 2024. Further, that the 1st defendant/ respondent has moved to subdivide the land despite the same having been declared government land, and that the said property is occupied by hundreds of families including the plaintiffs/applicants. Further, it was deposed that the actions of the 1st defendant/respondent are illegal as the plaintiffs/ applicants stand to be displaced from their homes and businesses.

9. The application was further supported by the affidavit of Brian A. Ikol, the Director Legal Affairs and Alternative Dispute Resolution of the 3rd defendant/respondent sworn on 21st January, 2025. The 3rd defendant/respondent reiterated similar averments raised by the 2nd defendant/respondent, and the plaintiff/applicant. There would no need to reproduce the same, save to note its contents.
10. The application was opposed by the replying affidavit of Dominic Ngare, the director of the 1st defendant/respondent sworn on 16th January, 2025. The 1st defendant/respondent deposed that it is the registered owner of L.R. No. 14847 (I.R 51169) measuring approximately 70.61 hectares, the same having been issued in accordance with the law, thus it is private property. Further, that

its ownership of the said land has never been challenged through proper legal channels.

- 11.** The 1st defendant/respondent deposed that prior to the filing of this application, it instituted a suit in ELCLC No. 350 of 2024 vide the amended plaint dated 3rd September, 2024 and a notice of motion dated 23rd August, 2024 seeking injunctive orders. It was deposed that as a result thereof, it is an abuse of this court's process and time to hear and determine the instant application where the same is before a court of equal jurisdiction. Further, that in that suit, the plaintiffs/applicants' advocates are the advocates for the interested parties in the said suit, and it is insincere, dishonest and hypocritical of the same advocate to proceed and lodge the instant suit in respect of L.R No. 14847 (I.R. 51169) seeking similar orders against parties similar to the parties in that suit.
- 12.** The 1st defendant/respondent deposed that it would be pre-judicial if the court proceeds to make a determination in respect of the suit property as the matter is pending before the Court of Appeal.
- 13.** The application was canvassed through written submissions. The plaintiffs/applicants filed their written submissions dated 14th February, 2024 (sic). The 1st defendant/respondent filed its written submissions dated 10th March, 2025. The 2nd

defendant/respondent filed its written submissions dated 11th March, 2025. The 3rd defendant/respondent filed its written submissions dated 10th March, 2025.

14. I have carefully analyzed and considered the application, the replies thereof and the written submissions filed by the respective parties and the issue for determination is *whether the plaintiffs/applicants are entitled to injunction orders pending the hearing and determination of the suit.*
15. The requirements for the grant of an interlocutory injunction was set out in the case of **Giella versus Cassman Brown & Co. Ltd [1973] EA 358** where it was stated:-

“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 (E.A. INDUSTRIES VS. TRUFOODS [1972] E.A. 420.)”

- 16.** A prima facie case was described in the case of **Mrao Ltd versus First American Bank of Kenya Ltd & Others Civil Appeal No. 39 of 2002**, as:-

“In civil case, 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 been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

- 17.** In **Ndorongo Gatheru & another v Norman Kariuki & 30 others [2017] KECA 451 (KLR)** the Court of Appeal recorded the history of the suit property and held as follows:-

“The Colonial Government issued to Paris John Sauvage, a settler, a grant to parcel of land known as LR8569, in the area then described as East of Kiambu District (today’s Kahawa West, Nairobi County) measuring 875 acres less road reserve of 5 acres for a term of 949 years with effect from 1st June 1954. The grant was issued under the then Registration of Titles Ordinance (chapter 160). Between 1954 and 1989 there were many parties claiming the property. For instance there was a caveat by the Crown in 1955. In the same year the property was transferred to Kahawa Quarries Ltd that charged it to the National Bank of India. There was another caveat by the East African Power and Lighting Company Limited in 1956 and yet another one, in the same year by Murphy Chemicals (E.A.). In 1957 some 504 acres

was surrendered to the Crown and LR. No.8569/1, a sub-division of the original parcel was created. Later in 1958, 8569/2, yet another sub-division measuring 5.20 acres was created and transferred to Murphy Chemicals (E.A.). LR. No. 8569/4 comprising 7.0 acres was transferred to Mr. Cecil Hillary Greenwood - Penny.

On 19th September 1961 Kahawa Quarry Ltd, in whose name the original parcel was registered went into voluntary liquidation. Six years later on 4th February, 1966 a total of 359 acres less 5 acres was transferred to Pacon Limited in what became LR. No.8569/5, which is the subject matter of this appeal (the suit land). In April, 1966 Ndorongo Gatheru (the 1st appellant) and two others lodged a caveat on the title of the suit land claiming purchasers' interest. But that caveat was removed eight years later in 1974 pursuant to section 57(6) of the Registration of Titles Act. Although from the material before us, it is not apparent when exactly Pacon Limited was struck off the register of Companies, on 15th July, 1974 the Government acquired 55.5 hectares of LR 8569/5, which most likely comprised the whole suit land. In 1976, two years after that acquisition there was a transfer in 1976 to Gatundu and Mangu Farm Company Ltd, (the 2nd respondent) absolutely in consideration of Kshs.180,000.

Ultimately, on 6th June, 1989, the Government, by virtue of Section 8 of the Government Land Act

Cap. 280 had LR. No. 8569/5 vested in it Bona vacatia. In 1992 in the City Court Ndorongo Gatheru was, in a strange twist, charged as the owner of LR No. 8569 in Criminal Case No. 5834 of 1992, with causing a nuisance by failing to properly maintain the structures on LR 8569 contrary to Section 115 of the Public Health Act. Having been found guilty and upon his conviction under Section 18(1)(b) of that Act he was sentenced to a fine of Kshs.80 or 7 days imprisonment in default. The structures were condemned and declared unfit for human habitation. As a consequence, all the occupants were ordered to vacate immediately. The process was to be supervised by the police. Subsequently, it appears to us that the respondents instituted several other claims. Alluded to are Nbi. HCCC No. 422 of 1995, Rent Restriction Tribunal (the Tribunal) Case Nos. 196 to 231 of 1991 (consolidated), SPM CC No. 97 of 1996, Nbi. HCCC No. 1321 of 1996, among others. It is also apparent that the Tribunal issued an order of vacant possession against the respondents.

Following these events on 4th September, 1995 the respondents, by an originating summons, the subject of the impugned judgment applied to be declared the owners of the portions of L.R. Nos. 8569 and 14847 contending that they had been in physical and continuous occupation of the two parcels for a period far in excess of 12 years; that their parents had worked for the original owner,

Paris John Sauvage since 1932; that some of them were born and raised on the property, with the last of the occupants settling on the suit land or born there in 1964; that during that period they made substantial developments on the portions they occupied, the value of which was in excess of Kshs.2,000,000/=; that the appellants had never occupied the parcels in question or made any development on the same, that as a result they were entitled to be registered as the owners by adverse possession of the portions occupied by each one of them; and that the register be rectified to reflect this position.

In reply, the appellants argued that the originating summons was incompetent and the appellants' claims over the property are vague and misleading; that a claim by adverse possession was incapable of being enforced against the Government; that the 2nd appellant was the owner of the suit land and had indeed sold several portions to third parties who had in turn constructed modern houses, hence the respondents could not claim to have had collective and exclusive possession of the suit land; that they had made no developments of their own on the suit land; that all through, they occupied the suit land as tenants and/or as children under the care of their parents who occupied the property either as workers or tenants; that the 1st and 2nd appellants had been collecting rent from the respondents; and that in any case the portion of

the property occupied by the respondents did not exceed one acre as it only comprised the portion where the original owner had constructed workers' quarters.

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What this history demonstrates is that from the time ownership of parcel LR No.8569 changed from Paris John Sauvage, the original owner in 1955 to 1989 when the suit land was acquired by the Government bona vacantia, it was all through claimed by many. For instance Kahawa Quarries Ltd (1955), a caveat by the Crown (1955), caveats by the East African Power and Lighting Company and by M/s Humphrey Chemicals (EA) Limited (1956), a surrender of 504 acres to the Crown in 1957, a transfer to M/s Murphy Chemicals (E.A.) (1958), to Mr. Cecil Hillary Greenwood - Penny (1961), to M/s Pecon Ltd (1966), a claim by the 1st appellant, the 31st respondent, Rufus Wamae and Wilfred Mwai (1966), another claim by the 2nd appellant (1976) and finally the aforesaid vesting bona vacantia in 1989. We reiterate the more fundamental question in this dispute is; when did time begin to run and against which title?

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While criticizing the learned Judge in their grounds of appeal for failing to appreciate that the two parcels were not one and the same, the appellants themselves failed to explain the relationship between the two parcels or how the 2nd appellant acquired LR No. 14847. This was particularly vital in view of the appellants' previous persistent claim to No.8569/5, the suit land. They lodged a caveat claiming to have purchased it from Pacon Limited in 1976, the same year the 2nd appellant is reflected as having been registered as the owner. But they have equally been persistent before the trial Judge and in this appeal that the two parcels are distinct. In entering judgment, the learned Judge awarded to the respondents 7 acres "of that portion of land originally known as LR 5569/5" (ought to have been 8569).

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For our part we find no evidence that LR. No. 14847 was created in place of LR. No.8569 or in place of any of its sub-divisions. We have demonstrated that the appellants have all along claimed that they were entitled to LR. No.8569 as purchasers. They even caused it to be transferred to the 2nd appellant before it vested in the Government. Even after that period, in 1992 the 1st appellant was charged before the magistrates' court at City Hall in Cr. Case No. 5834 of 1992 with causing a nuisance as the owner of the

structures on the suit land, contrary to section 115 of the Public Health Act and was indeed convicted and sentenced. Yet they have conveniently disowned the suit land, insisting that they are the registered owners of LR. No.14847. The grant in respect of LR. No. 14847 was issued barely a month after LR 8569/5 was declared bona vacantia. If the two parcels are different, why would the appellants be aggrieved by the decision of the learned Judge granting to the respondents 7 acres “of that portion of land originally known as LR No. 8569/5”. At any rate, what comes out clearly from the entire case is that the trial court, counsel for the parties and the parties themselves failed to unravel these puzzles. For example, the court failed to visit the disputed land even after an order to do so was made. Such a visit would have availed the court an opportunity to confirm the nature of structures on the suit land, the habitants and the actual location of LR. No.14847, if it actually existed on the ground.

Going by the register, LR. No. 8569/5 has not changed since it vested in the Government in 1989. It cannot therefore be alleged that the parcels are one and the same. Subsequent transactions confirm this. As recent as the year 14th January, 2009 the Commissioner of Lands applied to the Director of City Planning for approval of the sub-division scheme plan in respect of LR No.8569 (should be LR No.8569/5). It follows therefore that any suggestion that LR

No. 14847 was created in place of LR No. 8569/5 would be a fraud. We suspect, from the appellants' previous claims to LR No.8569/5 that this may indeed be so. As individuals in 1966 the 1st appellant, the 31st respondent, Rufus Wamae and Wilfred Mwai claimed LR No.8569 as purchasers. Subsequently after the incorporation of the 2nd appellant in which the 1st appellant was a director, another attempt was made to claim LR No. 8569/5 in 1976 when it was allegedly transferred to 2nd appellant.

In a nutshell, the claim by the respondents was in relation to LR. No. 8569 and LR No. 14847. There is indeed no evidence, as we have demonstrated that the suit land belonged to the 2nd appellant. They also failed to prove how the original LR. No. 8569 became LR No. 14847.” (with emphasis)

- 18.** The above judgment delivered by the Court of Appeal on 30th June, 2017 speaks in details to the history, the litigation and subsequent determination of the suit property in this matter. The averments raised by the plaintiffs/applicants, and which have been supported by the 2nd and 3rd defendants/respondents are proof that indeed the issues touching on the suit property were determined thereof by a superior court. It thus defeats the argument that the suit property has never been litigated through proper channels. One would wonder, which proper channel is available save for the

court which derives its powers from the Constitution of Kenya to hear and determine disputes relating to any interest in land.

- 19.** Having said that and noting the evidence tendered by the plaintiffs/applicants that the 1st defendant/respondent has gone ahead and subdivided the suit property and further sold the same to other parties, and noting that the 1st defendant/ respondent has not denied in engaging in these unlawful and fraudulent acts, I find that the plaintiffs/applicants have established a *prima facie* case.
- 20.** On whether the plaintiffs/applicants will suffer irreparable loss, the plaintiffs/applicants argued that owing to the unlawful acts of the defendants/respondents, they risk losing their homes and businesses which facts were supported by the 2nd defendant/respondent. While the 1st defendant/respondent has not denied its acts of subdivision and sale of the plots in the suit property, I am satisfied that the plaintiffs/applicants will suffer loss and damage, and thus it is necessary that injunction orders are issued.
- 21.** The court is not in doubt and thus there is no need to consider any balance of convenience as the same lies in favour of the plaintiffs/applicants.

22. From the above, I find merit in the notice of motion dated 18th December, 2024, and the same is allowed in the following terms:-

- i. An order of temporary injunction is hereby issued restraining the defendants/ respondents from selling, leasing, charging, surveying, subdividing, registering any sub divisions, registering any transfers or in way dealing with the records of L.R 14847 (I.R 51169) or any of its subdivision pending the hearing and determination of this suit.***
- ii. The 1st and the 4th defendants/ respondents are hereby ordered and directed to surrender forthwith the original grant of L.R 14847 (I.R 51169) and any resultant subdivisions of the same to the court pending the hearing and determination of this suit.***
- iii. The plaintiffs/applicants are awarded costs of this application, the same to be borne by the 1st defendant/respondent.***

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 16TH DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.
JUDGE**

16/12/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Ochieng for the 1st Defendant/Respondent

Ms. Gardale for the 3rd Defendant/Respondent

Mr. Mwenda for the Plaintiffs/Applicants

Ms. Mwiri holding brief for Mr. Mwaniki for the intended 1st to 9th

Interested Parties

ORIGINAL