

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC LAND CASE NO. E108 OF 2025

JULIUS GITONGA M'KAARI

PLAINTIFF

VERSUS

TWALIB MUSA OBUYA 1ST

DEFENDANT

YUSUF ALI 2ND

DEFENDANT

HASSAN MOHAMED 3RD

DEFENDANT

MABRUK TOWERS LIMITED 4TH

DEFENDANT

ABDI AIDID ALI 5TH

DEFENDANT

NAIROBI CITY COUNTY INTERESTED

PARTY

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1. What is before Court for determination are four applications. In the Plaintiff's Notice of Motion dated 13th March 2025, he seeks the following Orders:

a) Spent.

b) Spent.

c) Spent.

d) That pending the hearing and determination of this

suit, this Honourable court be pleased to issue a temporary injunction barring and/or restraining the 1st, 2nd, 3rd, 4th and 5th Respondents, whether by themselves, their agents, servants, employees, or any person acting under their authority from constructing, developing, or in any way altering and dealing with the properties known as Plot No. 36/VII/637 (Now Nairobi /Block 50/186), Plot No. 36/VII/638 (Now Nairobi /Block 50/187), and Plot No. 36/VII/639 (Now Nairobi/Block 50/188).

- e) That pending the hearing and determination of this suit, this Honourable court be pleased to issue a temporary injunction barring and/or restraining the 1st,2nd,3rd,4th and 5th Respondents, whether by themselves, their agents, servants, employees, or any person acting under their authority, from proceeding with the amalgamation process of the properties known as Plot No. 36/VII/637 (Now Nairobi /Block 50/186),Plot No. 36/VII/638 (Now Nairobi /Block 50/187), and Plot No.36/VII/639 (Now Nairobi/Block 50/188).
- f) That this Honourable court do issue an order directing the OCS California Police station to ensure compliance with the orders of this Honourable court.
- g) That the costs of this application be borne by the Respondents/Defendants.
- h) That this Honourable Court be pleased to grant such further or other orders as it may deem just and expedient in the circumstances.

2. The application is premised on grounds on its face and on the

Plaintiff's supporting affidavit and his further affidavit. He
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avers that he is the registered proprietor of **Plot No. 36/VII/637 (Now Nairobi /Block 50/186), Plot No. 36/VII/638 (Now Nairobi /Block 50/187), and Plot No. 36/VII/639 (Now Nairobi/Block 50/188)** vide allocation by the defunct Nairobi City Commission on 8th September 1987 and 8th September 1992 respectively. Further, that in disregard to his proprietorship status, the Defendants have demolished his houses thereon, rendering him homeless and they have fenced off the property with iron sheets and commenced construction activities, having obtained approvals from the Interested Party.

3. He claims that he has learnt that the 1st to 3rd Defendants entered into a joint venture agreement dated 8th February 2024 with the 4th Defendant for the development of the suit properties, of which the 4th Defendant is entitled to 70% ownership of the resulting development while the 1st to 3rd Defendants retain the remaining interest. Further, that the 4th Defendant has initiated an amalgamation process with the

Interested party, to consolidate his three plots into a single title.

4. He contends that he filed **MCELC/2249/2024 (Julius Gitonga M' kaari v Twalib Musa Obuya & Abdi Aidid Ali** to safeguard his interest in the suit property and that in the matter, ex parte status quo orders were issued but the suit was dismissed for want of pecuniary jurisdiction vide a Ruling dated 30th January 2025.
5. The application is opposed by the 1st to 3rd Defendants who swore a replying affidavit sworn by the 1st Defendant. He claims that he is the duly registered owner of **LR No. 36/VII/638 (Now Nairobi /Block 50/187)**, and **LR No. 36/VII/639 (Now Nairobi /Block 50/188)**, formerly House **No. C13 (A &B)**, while the 2nd Defendant is the duly registered owner of **LR No. 36/VII/636** and the 3rd Defendant is registered as owner of **LR No. 36/VII/637**. Further, that his two properties which were part of Pumwani re-development scheme, were initially purchased from the

Interested party's predecessor by one Salim Bint Mohamed and assigned to her through the Interested Party's tenant purchase scheme. Further, that Salim Bint Mohammed would allegedly vide a letter dated 18th May 1972 addressed to the Housing Manager of the scheme requested that the assignment of the properties be transferred to Musa Hassan, Alias Musa Obuya Akoko and in 1985, the said Musa Hassan transferred the assignment to Zuhura Salim Dosa (now deceased). Subsequently, the Interested Party's predecessor issued a Lease dated 15th December 1994 over **LR No. 36/VII/639** to his late mother, Zuhura Salim Dossa, who later transferred the property to him vide an Assignment dated 31st August 2009 and he was then issued with Leases to the said properties.

- 6.** He claims that the 3rd Defendant purchased his plot from the family of the late Johana Gitau Michiri and on 8th February 2024 he entered into a joint venture agreement together with the 2nd and 3rd Defendants, with the 4th Defendant for the

development of the suit properties. He claims that pursuant to the agreement, he served his tenants with notices to vacate dated 16th February 2024 and he also vacated as he was living there on.

7. He asserts that on 12th June 2024, the Plaintiff led goons to the property who destroyed it by stealing window grills and iron doors, prompting him to make a report at California police station. He later came to learn that the Plaintiff had obtained an ex parte order in **MCELC No. E249 OF 2024** and in the said suit which was dismissed for want of pecuniary jurisdiction, one of his former tenants named Zainabu Mbwana swore an affidavit confirming that she was his tenant from 2010 until mid-2024. Further, that he also resided thereon and that she had never seen the Plaintiff there thus the Plaintiff has committed perjury by stating on oath that he was residing on the suit property.

8. He claims that by a letter dated 3rd July 2024, the Interested Party's Chief Officer Housing and Urban Renewal confirmed

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that **House No. C13 (A& B) (LR No. 36/VII/638** and **LR No. 36/VII /639** belonged to Musa Hassan (deceased). He urges the Court to protect their right to property.

9. The application is also opposed by the 4th and 5th Defendants vide a replying affidavit sworn by the 5th Defendant, who is the 4th Defendant's sole director. He confirms that the 4th Defendant entered into a joint venture agreement dated 8th February 2024 with the 1st to 3rd Defendants for the development of shops and apartments as per County approvals on **LR No. 36/VII/638, LR No. 36/VII/639, LR 36/VII/636** and **LR No. 36/VII/637** and that prior to executing the same, the 4th Defendant carried out due diligence.

10. He asserts that as per the joint venture agreement, the construction of the units was to take not more than thirty (30) months from the date of hand over of vacant possession of May 2024. He contends that the 4th Defendant has so far spent kshs.70 million while the Plaintiff has not

demonstrated that he would suffer irreparable harm that cannot be adequately remedied by damages.

11. The application is supported by the Interested Party vide the replying affidavit of its Chief Officer of lands, Cecilia Wangare Koigu. She avers that the Plaintiff is the original proprietor of the suit parcels vide allocation by the Interested Party through Letters of allotment dated 8th September 1987 for **Plot No. 36/VII/637** and 8th September, 1992 for **Plot No. 36/VII/638** and **Plot No. 36/VII/639**. She states, that the Plaintiff remitted the requisite stand premium and ground rent as conditions precedent to the issuance of leases. Further, that the housing units could not exist independently of the parcels of land, thus the Lease formed the legal foundation upon which the tenant purchase agreement for the housing unit was anchored.

12. She confirms that upon making payments, the Plaintiff was

allocated houses/flats **C11(B)** and **C13(A&B)** in the estate of
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Pumwani Development under Account No.31004. She states that the Interested party holds valid leases in respect of plots No's **36/VII/637 (Block 50/186)**, **36/VII/638 (Block 50/187)**, and **Plot No. 36/VII/639 (Block 50/188)** duly executed between the defunct City Council of Nairobi and the Plaintiff who has been making rate payments to date and he was issued with clearance certificates and confirmations of payment of rates and other statutory charges.

- 13.** She contends that during the transition from the defunct City Council of Nairobi to the Nairobi City County, critical records and files relating to various tenant purchase schemes were misplaced/lost, with the result that genuine allottees were compelled to remit stand premium, ground rent and survey fees afresh in order to have their allocations regularized. However, the relevant files relating to Pumwani Development were traced and upon verification of records, it was established that the Plaintiff is the original allottee of the subject properties, which position overrides a letter dated

30th April 2025, authored by the Director of Criminal Investigations alleging that the Plaintiff is not owner of the said suit plots.

14. The second application is the Defendants' Notice of Motion dated 9th May 2025 where they seek the following Orders:

a) Spent.

b) Spent.

c) That this Honourable court be pleased to order the Plaintiff/Respondent to within fourteen (14) days give security for damages in the sum of ksh. 30,000,000.00 to cover damages that may be suffered by the 4th Defendant/Applicant as a result of the status quo order issues on 29th April 2025.

d) That the Plaintiff/Respondent to give the security in order (c) above by way of an irrevocable performance bond from a reputable bank or insurance company or by depositing the same in a joint interest earning account in the

name of his Advocates, M/S Jamal Bake & Associates Advocates and that of the Defendants/Applicants' Advocates, M/s Issa & Company Advocates, with Fourteen (14) days of the court's order.

e) That the Plaintiff/Respondent be ordered to deposit security for the Defendants/Applicants' costs in the sum of ksh. 3,000, 000.00 or any amount as the court shall consider appropriate into a joint interest earning account in the name of his Advocates, M/s Jamal Bake & Associates Advocates and that of the Defendants/ Applicants' Advocates, M/S Issa & Company Advocates, within twenty one (21) days of the order;

f) That, in default of the Plaintiff /Respondent depositing.

15. The application is premised on grounds on its face and on the 5th Defendant's supporting affidavit, whose averments mirror the averments in the affidavits in opposition to the Plaintiff's application. He also avers that the 4th Defendant upon

obtaining the requisite approvals to develop the suit properties entered into an agreement and conditions for building works dated 28th February 2025 with a contractor and construction of the project commenced on the site on 3rd March 2025 for a contract price of ksh. 609,016,177.00. Further, that the completion date of the project is projected to be 4th March 2027.

16. He asserts that he learnt that the Plaintiff had in 2024 purported to sell the suit properties to an entity known as Irshad Investment Limited which paid him kshs. 11,890,000/= towards the purchase, but he failed to complete the transaction. He states that Irshad Investment Limited reported the matter to Shauri Moyo Police station and vide a letter dated 30th April 2025, the Officer in charge - DCI Shauri Moyo confirmed that following investigations, it was established that the 1st Defendant is the owner of the properties, subject of the investigation. He contends that the Plaintiff was arrested and released on cash bail to appear

before the Chief Magistrate's Court at Makadara Law courts to answer to charges in **Makadara Criminal Case No. E2031 of 2025**, where he was charged with the offence of obtaining the sum of ksh.11,890,000.00 by false pretense, from Irshad Investment Limited by pretending to be in a position to sell the said entity **LR No. 36/VII/638 (now Nairobi /Block 50/187)** and **LR No. 36/VII/639 (now Nairobi /Block 50/188)** belonging to the 1st Defendant, plus the offence of giving false information to a person employed in the public service. However, he failed to turn up and the cash bail was forfeited by the court and warrants of his arrest issued.

17. He explains that the effect of this Court's status quo orders issued on 29th April 2025 is to suspend the construction of the project on the suit properties, yet the 4th Defendant has so far spent about kshs.70 million towards it, while the Plaintiff does not stand to suffer any loss, and the Defendants are apprehensive that when the status quo orders are

discharged, the Plaintiff will not be in a financial position to compensate them for any losses they will have incurred from the stoppage of the construction. Further, that the Plaintiff's whereabouts are unknown and warrants for his arrest have been issued in **Makadara Criminal Case No. E2031 of 2025**, and the Defendant are unaware of any assets that he may own.

18. He points out that the 4th Defendant stands to suffer loss and damages and points out that loss and expense caused by disturbance of regular progress of the works is calculated at the rate of ksh.2,115,000.00 per week, which losses are as attributed on expenses to rectify structure as a result of exposed construction, insurance costs, increased security costs and fees due to professionals and other personnel costs.

19. The application is opposed by the Plaintiff who filed Grounds of Opposition and a replying affidavit. He reiterates his averments in his affidavit in support of the application and

asserts that as a legal and rightful owner of the suit plots, he had the right to enter into contracts for the disposition of the same with Irshad Investments Limited, which conducted due diligence and satisfied itself that he was the original owner. He admits that the said Irshad Investments paid him kshs.10 million but prior to payment of the balance of the purchase price, the Defendants forcibly ejected him from the suit property.

20. He claims criminal proceedings were instituted against him on a false misunderstanding that he had set out to defraud Irshad Investments and claims that he is in the process of writing to the Directorate of Criminal Investigations in order to seek a review of the decision to charge him. He confirms that the warrants of his arrest previously issued have been lifted. He hastens to add that he has a right to be presumed innocent until the contrary is proved.

21. He contends that there is no basis for issuance of the security for damages sought by the Defendants because the

Court is yet to consider whether he should give an undertaking as to damages as a condition for the sought injunctive reliefs and that there is no proper basis to warrant a deposit of security for costs as the same would be an affront to Article 48 of the Constitution on access to justice.

22. The Plaintiff also swore a further affidavit in which he contends that the Defendants have not produced allotment letters giving rise to their alleged leases and that he has been struggling with ill health. Further, that on 22nd September 2025, he was arrested and arraigned at Makadara law courts for absconding court in **Makadara Criminal Case No. E2031 of 2025**, and on 25th September 2025, he was released on account of ill health after posting a cash bail of ksh.300,000/=.

Application dated 30th September 2025

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

a) Spent.

- b) That this Honourable court be pleased to extend and/or enlarge time and grant leave to the Plaintiff/Applicant herein to file and serve their further affidavit and written submissions dated 29th September 2025 out of time and on granting such leave, the further affidavit and written submissions dated 29th September 2025 be deemed as properly filed, served and on record upon payment of the requisite court fees.**
- c) That upon granting order (b) above, this Honourable court be pleased to grant the Respondents and the Interested Party a reasonable period to file any additional pleadings as may be necessary.**
- d) That the costs of this application be in the cause.**

24. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that he is of old age and suffers from type 2 Diabetes Mellitus, hypertension and bronchial asthma, which he has been managing for the past

fifteen (15) years, and which condition has seen him in and out of hospital.

25. He contends that he was informed that on 30th June 2025, this Court granted him three (3) days within which to file a further affidavit but during that period, he was in a vegetative state, making it impossible for his advocate on record to get his signature on a further affidavit. He annexed a medical report and prescription from Reliance Hospital and contends that he was admitted at the facility where he was bedridden and tethered to an oxygen tank. Further, that his condition worsened and on 20th April 2025, his family took him to RFH Healthcare where he was put on bed rest. He annexed a medical report from RFH Healthcare.

26. He claims that while at RFH, his condition worsened and on 17th June 2025, he was taken to St Anne Mission Hospital-Igoji in Meru where he was attended to by Dr. Amina Hassan, who prescribed further medication and routine checkup, adding that his health improved about 20th

September 2025 and his advocate reached him for further instructions. He explains that on 22nd September 2025, he was arrested and arraigned at Makadara law courts for absconding court in **Makadara Criminal Case No. E2031 of 2025**, and on 25th September 2025, he was released on account of ill health after posting a cash bail of ksh.300,000/= and on 26th September 2025, he managed to physically attend his advocates offices and give instructions. He pleads for compassion from the Court and urges it to admit his documents out of time, adding that the Defendants and the Interested Party will not be prejudiced.

27. The application is opposed by the 1st to 5th Defendants vide the replying affidavit of Abdi Aidid Ali. He contends that the medical reports annexed to the Plaintiff's supporting affidavit are inadmissible for want of signature of the author and a stamp from the alleged hospitals he was attended in. Further, that the Plaintiff's averments that he was in a

vegetative state are untrue as he swore a replying affidavit in opposition to their Notice of Motion application dated 9th May 2025, on 10th June 2025, during which time he claims to have been incapacitated.

28. He also asserts that they stand to suffer prejudice as they filed their submissions dated 12th June 2025 in respect of the Plaintiff's Notice of Motion application dated 13th March 2025 without having had sight of the Plaintiff's further affidavit and submissions thereto. Further, that the delay in filing the further affidavit and submissions is not justifiable but is calculated to delay justice.

Application dated 2nd October 2025

29. It is filed by the Interested Party which seeks the following Orders:

a) Spent.

b) This Honourable Court be pleased to extend and /or enlarge time and accept into the court's records the Interested Party/Applicant's

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replying affidavit and written submissions dated 19th September 2025 and after grant such leave, this Honourable court be pleased to declare that the replying affidavit and written submissions annexed hereto be deemed to be properly filed and served upon the Respondents upon the Respondent's payment of the requisite court fees.

c) This Honourable court be pleased to extend and /or enlarge time and grant leave to the Interested Party /Applicant herein to file and serve their grounds of opposition and submissions dated 2nd October 2025 out of time and on granting such leave, the said grounds of opposition and submissions annexed hereto be deemed as properly filed, served and on record upon payment of the requisite court fees.

d) The costs of this application be provided for.

30. The application is premised on grounds on its face and on the supporting affidavit of Boniface Waweru, Director of Civil Litigation and Alternative Dispute Resolution Department in the Interested party. He avers that the Interested party

originally instructed the firm of Githogori and Harrison Associates to represent it, in these proceedings on 29th May 2025 but there was inaction on its part, prompting the Interested party to appoint the firm of P.O Odira & Co. Advocates who learnt that the former advocates had not filed any response on behalf of the Interested Party.

31. Subsequently, the Interested Party's new advocates requested for necessary documents to enable proper representation and since they are old documents dating back to 1990's and early 2000's they were stored in the Interested Party's archives and due to poor record keeping and extensive volume of archives inherited from its predecessors, it took time to retrieve them but it managed to forward it to its Advocates on 16th September 2025. He also avers that since the matter is new, it is in the interest of justice that the Court admits the documents to ensure it has full set of facts and documents necessary to determine ownership and substantive issues in the suit.

- 32.** The application is opposed by the 1st to 5th Defendants vide the 1st Defendant's replying affidavit. He avers that the replying affidavit sought to be admitted, sworn by Cecilia Wangare Kiogu, is fatally defective and not fit for admission for the reason that it is not signed by the deponent as required, given that in place of the deponent's signature, what has been affixed is her stamp reading '*Cecilia W Kiogu*'.
- 33.** Further, that the said affidavit has not been sealed, signed and marked as required by Rule 9 of the Oaths and Statutory Declarations Rules and the same is inadmissible and the annexures attached to the said replying affidavit sought to be admitted are incompetent and of no probative value for being in contravention of the provisions of Rule 9 of the Commissioner for Oaths Rules as the signature of the Commissioner for Oaths at the jurat of the said replying affidavit is different from the signature appended on the annexure stamp on the annexures of the affidavit.

34. He also avers that in its orders issued on 17th March 2025, this Court directed the Plaintiff to serve its Notice of Motion application dated 13th March 2025 on the Defendants' and Interested Party within seven (7) days and the contention that the Interested Party's late filing of its pleadings is attributable to its poor record keeping and extensive volumes of archives inherited from its predecessors is incredible in view of previous documents and confirmations emanating from the Interested Party. He contends that the replying affidavit sought to be admitted is defective and therefore not a deposition in law and the Interested Party's explanation for the delay in filing the documents sought to be admitted is not valid thus the delay is not justifiable.

35. The applications were canvassed by way of written submissions.

Submissions

36. The Plaintiff submits that he has established conditions for grant of injunctions as set in the case of **Giella v Cassman**

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Brown & Co. Ltd [1973] EA 358 having demonstrated that he was allocated the suit plots by the Interested party vide allotments issued in 1987 and 1992, which confer superior title over the 1st Respondent's recent and irregularly procured Certificates of Lease issued in 2024 and which do not demonstrate root of allocation. Further, that the Interested Party which is the allocating authority confirmed that the suit plots were allocated to him. He also submits that the alleged approvals procured by the 4th and 5th Defendants are irregular and invalid as they all predate the Certificates of Lease presented by the 1st Defendant and offend Regulation 15(2)(a) of the Physical and Land Use Planning (General Development Permission and Control) Regulations, 2021 which requires submission of a certified copy of title as a prerequisite for any development permission.

37. He further submits that the 4th and 5th Defendants joint venture agreement dated 8th February 2025 predates the 1st

Defendants' certificates of title by ten (10) months, evidencing collusion and bad faith and that the said agreement is also clear that the Defendants intend to build apartments on the suit properties and sell to third parties thus once built, the land cannot be undone and once units are sold to third parties, it will be impossible to recover. He reiterates that his long occupation since 1987 outweighs the Defendants' recent fraudulent claims.

38. It is also the Plaintiff's submission that this Court exercised its discretion under Order 40 Rule 2(2) of the Civil Procedure Rules and deemed it appropriate to issue orders of status quo without security for costs and security for damages and that the same ought to be complied with.

39. To buttress his averments, the Plaintiff relied on the following decisions: **Shimmers Plaza Limited v National Bank of Kenya Limited [2025] eKLR; Chania Shuttle Limited v Kenol Kobil Limited (KEHC 3042 KLR), Shah & 2 Others v Shah & 2 Others [1982] KECA 26(KLR);**

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Ocean View Beach Hotel Ltd v Salim Sultan Mollo & 5 others [2012] eKLR and Gulf Engineering Ltd v Amrik Singh Kalgi [1976] eKLR.

40. On its part, the Interested Party submits that the Applicant has met the threshold to be granted injunctive orders sought in the application dated 13th March 2025 and reiterates the averments in its affidavit in support of the application.

41. The 1st to 5th Defendants reiterate that the status quo order issued herein has the effect of suspending the construction of the project on the suit properties thus it is essentially an injunction, and while the Plaintiff does not stand to suffer any loss, the Defendants stand to suffer substantial loss and are apprehensive that when the status quo orders are discharged, the Plaintiff will not be in a financial position to compensate them. To buttress their averments, they relied on the following decisions: **Republic v National Environment Tribunal & others; Ex parte Palm Homes Limited [2013] eKLR and Nairobi Business Park**

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Limited & another v Kenya Forestry Service [2013] eKLR.

42. They also rely on the case of **Chatur Radio Service v Pronogram Limited [1994] eKLR** to submit that they ought to be given an undertaking to protect them against any damages they may suffer by the wrongful issuance of an injunction.

43. On the issue of security for damages and costs, they submit that under Order 26 Rule 1 of the Civil Procedure Rules, this Court has discretion to order security for costs and that such orders are not an impediment to Article 48 of the Constitution as implied by the Plaintiff, since the imposition of security for costs is constitutional as held in **Rockland Kenya Limited v Elliot White Miller [1994] eKLR** and **Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others [2023] KESC 11(KLR)**. They also contend that the Plaintiff did not discharge the evidentiary burden that he will be able to pay costs and damages.

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Analysis and Determination

44. Upon consideration of the four instant applications including the respective affidavits, Grounds of Opposition and rivalling submissions, the following are the issues for determination:

- **Whether the Plaintiff should be granted leave to file and serve further affidavit and written submissions dated 29th September, 2025.**
- **Whether time should be enlarged for the Interested party's replying affidavit and written submissions to be admitted as part of court record.**
- **Whether the Plaintiff has met the threshold for grant of a temporary injunction.**
- **Whether the Defendants are entitled to security for damages and costs.**

As to whether the Plaintiff should be granted leave to file his further affidavit and written submissions dated 29th September, 2025 and if time should be enlarged

for the Interested Party's replying affidavit and written submissions to be admitted as part of the Court record.

45. The Plaintiff has sought for enlargement of time to file his further affidavit and written submissions dated the 29th September, 2025 while the Interested Party has also sought for time to be enlarged for its replying affidavit and written submissions to be admitted as part of the Court record. The Defendants have opposed the two applications insisting that the Plaintiff did not offer proper reasons for failing to adhere to the prescribed timeliness. Further, that he was not on bed rest as claimed. As for the Interested Party, the Defendants contend that the records in respect to the disputed parcels of land were available and they should not be a delay in obtaining them as claimed by the Interested Party. Further, that explanation for the delay is not valid.

46. On enlargement of time, Section 95 of the Civil Procedure Act provides as follows:

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

47. While Order 50 Rule 6 of the Civil Procedure Rules stipulates that:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

48. In the case of **United Arab Emirates V Abdel Ghafar & Others 1995 IR LR 243** cited with approval in **Nicholas Kiptoo Arap Korir Salat V IEBC & 7 Others (2014) e KLR**, the Court held that:

“.....the grant or refusal of an extension of time is a matter of judicial discretion to be exercised, not subjectively, or at whim or by rigid rule of thumb, but in a principled manner in accordance with reason and justice. The exercise of the discretion is a matter of weighing and balancing all the relevant factors which appear from the material before the appeal tribunal. The result of the exercise of a discretion is not dictated by any set factor. Discretions are not packaged, programmed responses.” 2. As Sir Thomas Bingham M.R. pointed out in Costellow V Somerset CC (supra) at page 956 C, times problems arise at the intersection of two principles, both salutary, neither absolute.The first principle is that the Rules of court and the associated rules of practice, deserved in the public interest to promote the expeditious dispatch of litigation, must be observed. The

prescribed time limits are not targets to be aimed at or expressions of pious hope but requirements to be met.....” (Emphasis added). The second principle is that:“.....a plaintiff should not in the ordinary way be denied an adjudication of his claim on its merits because of a procedural default, unless the default causes prejudice to his opponent for which an award of cost cannot compensate.....”³. The approach indicated in these two principles is modified to the stage which the relevant proceedings have reached. If for example, the procedural default is in relation to an interlocutory step in proceedings, such as a failure to serve a pleading or give discovery within the prescribed time limits, the court will, in the ordinary way and in the absence of special circumstances, grant an extension of time. Unless the delay has caused irreparable prejudice, to the other party, justice will usually favour the action proceeding to a full trial on the merits. The approach is different, however, if the procedural default as to time relates to an appeal against a decision on the merits by the court or tribunal of first instance. The

party aggrieved by that decision has had a trial to hear and determine the case. If he is dissatisfied with the result he should act promptly. The grounds for extending his time are not as strong as where he has not yet had a trial. The interests of the parties and the public in certainty and finality of legal proceedings make the court more strict about time limits on appeals. An extension may be refused even though the default in observing the time limit has not caused prejudice to the party successful in the original proceedings.⁴ An extension of time is an indulgence requested from the court by a party in default. He is not entitled to an extension. He has no reasonable or legitimate expectation of receiving one. His only reasonable or legitimate expectation is that the discretion relevant to his application to extend time will be exercised judicially in accordance with established principles of what is fair and reasonable. In those circumstances, it is incumbent on the applicant for an extension of time to provide the court with it full, honest and acceptable explanation of the reasons for the delay. He cannot reasonably

expect the discretion to be exercised in his favour, as a defaulter, unless he provides an explanation for the default.”

49. In this instance, I note the Defendants have vehemently opposed the applications filed by the Plaintiff and Interested Party. Further, they insist that the Plaintiff was not sick but just failed to adhere to time lines. They argue that the records the Interested Party claims were difficult to obtain were readily available. On a reading of the legal provisions cited including the decision quoted and applying it to the circumstances at hand, it is clear Courts' are granted discretion to enlarge time and admit documents.

50. From the facts before this Court, I find that the reasons provided for enlargement of time and admission of documents are sufficient and plausible. Further, under Article 159 (2) (d) of the Constitution, as Courts we are directed to administer justice without undue regard to procedural technicalities and I opine that the issue of set

timelines is a procedural one. It is my considered view that both the Plaintiff and Interested Party filed their respective applications without delay. Further, this is still a fresh matter where we are still dealing with interlocutory applications. In the foregoing, I will proceed to grant the Plaintiff leave to file his further affidavit and written submissions dated 29th September, 2025 and admit the Interested Party's replying affidavit and written submissions dated the 19th September, 2025, as part of court record.

As to whether the Plaintiff has met the threshold for grant of a temporary injunction.

51. In line with the principles established in the case of **Giella v Cassman Brown & Co. Ltd [1973] EA 358** as well as the definition of a prima facie case as stated in the case of **Mrao Limited Vs. First American Bank of Kenya Limited & 2 others (2003) KLR 125**, I will proceed to analyse whether the Plaintiff has established a prima facie case to warrant the orders of interlocutory injunction as sought. The Plaintiff

claims that he is the original allottee of the suit plots, having been issued with allotment letters in 1987 and 1992 respectively, by the defunct Nairobi City Council, the Interested Party's predecessor. The Interested Party supports his claim and admits that it issued him with the said allotment letters and that he has been paying rates.

52. The 1st Defendant claims to be the registered owner of **LR 36/VII/638**, and **LR No. 36/VII/639** while the 2nd and 3rd Defendants' claim registration to **LR No. 36/VII/636** and **LR No. 36/VII/637** respectively. Further, the 1st to 3rd Defendants admit that jointly, they entered into a joint venture agreement dated 8th February 2024 with the 4th Defendant for development of shops and apartments on the said parcels.

53. Looking at the documents presented by the respective parties including averments by the Interested Party, I opine that as held in the **Supreme Court Case of Dina Management Limited vs County Government of**
ELC LAND CASE NO. E108 OF 2025 **Ruling**

Mombasa & 5 Others (Petition 8 (E010) of 2021)
[2023] KESC 30 KLR, it is not enough to wave the Certificates of Titles but one has to establish the root of those titles. At this juncture I opine that since there are two competing parties claiming the suit properties with the Defendants insisting they have titles, which I note were recently procured, while the Plaintiff still holds Letters of Allotment, it is pertinent for the Court to establish the root of each title so as to determine who is the rightful owner of the suit properties. In that regard, I find that the Plaintiff raises triable issues and the Plaintiff has indeed established a prima facie case to warrant the orders of interlocutory injunction as sought. However, since the Defendants hold Leases to the suit property, I opine that the Status Quo order earlier issued by this Court on 29th April 2025, would suffice until the determination of this suit.

As to whether the Defendants are entitled to security for damages and costs.

54. It is not disputed that this Court issued status quo orders on 29th April

2025. The Defendants contend that the 4th Defendant entered into an agreement and conditions for building works dated 28th February 2025 with a contractor, for construction on the suit properties, but the said construction has stalled due to subsisting status quo orders issued herein, and since it stands to suffer substantial loss and damages, the Plaintiff ought to be compelled to furnish security for damages and costs.

55. On his part, the Plaintiff contends that status quo orders issued herein are not injunctions per se and that an order for security for costs and damages would impede on his rights to access justice under Article 48 of the Constitution. It has emerged that the aforementioned joint Venture Agreement predated the certificate of lease held by the defendants.

56. Order 40 Rule 7 of the Civil Procedure Rules provides that any order for an injunction may be discharged/ varied/ set

aside by the Court on application by a party dissatisfied with such order, while Order 26 Rule 1 of the Civil Procedure Rules, gives this Court discretion to order that security for the whole or any part of the costs of any Defendant or third or subsequent party be given by any other party.

57. In *Chatur Radio Service v Phonogram Ltd (1994) KLR 114*, the Court laid down the circumstances for the grant of an order for security for damages as follows:

“The object in insisting upon an undertaking as to damages is that if by misadventure through the judge not knowing all the facts, such as being misled by the affidavit evidence before him or by the arguments of counsel, an injunction is granted on an interlocutory application which ought not to have been granted, then the Defendant is entitled to some remedy in damages, thus, the Defendant becomes protected against the damage he may suffer by the wrongful issue of the injunction so that the whole purpose of such injunction, which is to preserve matters in

status quo until the issue to be investigated in the suit can finally be disposed of, is not rendered nugatory. Save therefore in exceptional circumstances, an undertaking as to damages is required when an interlocutory injunction is granted in order that the court granting such injunction may be able to do justice if the injunction was wrongly granted”

58. As regards security for costs, the Supreme Court stated as follows in **Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others [2023] KESC 11 (KLR)**;

“In our view, there ought to be a balance for the two competing rights that is, the right to access to justice and the right to security for costs. Unlike the right for security for costs, the right to access to justice is guaranteed in the Constitution and as demonstrated in article 24 above, can only be limited by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including the nature of the right or fundamental freedom; the importance of

the purpose of the limitation; the nature and extent of the limitation; the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and freedoms of others; and the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.....We have shown that it is the duty of the court to balance the injustice to the plaintiff pursuing a proper claim. We state that the final result in such a balance must be reasonable and modest. An order for additional security must neither impede access to justice nor stifle genuine claims and most definitely must not be oppressive. A court is not bound to make an order of a substantial amount. It is paramount that the order be just and not impede access to justice”

59. In this instance, I note the Defendants are seeking security for costs and I opine that the burden of proof was upon them to demonstrate that the Plaintiff's claim is vexatious and otherwise amounts to an abuse of court process. From the explanation of the Defendants noting that this suit revolves

arounds competing interest over the suit properties and there is need to confirm the root of their respective titles, I find that they have failed to demonstrate the special circumstances to warrant the granting of security for costs and I will decline to do so.

60. In the foregoing, I find the Plaintiff's and Interested Party's applications merited and will allow them but the Defendants' application unmerited, and will disallow it.

61. Obtaining status quo orders granted on 29th April, 2025 to subsist pending outcome of suit.

62. Costs in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
11TH DAY OF DECEMBER, 2025**

CHRISTINE OCHIENG

JUDGE

In the presence of:

Bake for Plaintiff

Ms. Ahomo for Defendants/Respondents

Ms Muthoki for Odira Interested Party

Court assistant: Vena

ORIGINAL