

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC CASE NO E081 OF 2025

MATHEW CHEBON CHEROGONY.....PLAINTIFF

VERSUS

MATHEW KIPYEGON A. SANG.....1ST
DEFENDANT

JACKSON KEMBOI.....2ND DEFENDANT

RULING

1. This ruling is in respect of two applications. The first application is the Plaintiff’s Notice of Motion Application dated 18th August, 2025, which seeks the following orders:

a) Spent

b) Spent

c) THAT pending the hearing and determination of this suit, the court be pleased to restrain the Defendants from implementing the notice dated 21st May, 2025, by evicting the Applicant from title No. Nakuru Municipality Block 29/1078.

d) THAT the costs of this application be provided for.

2. The application was supported by the annexed affidavit of Mathew Chebon Cherogony, sworn on 18th August, 2025, where he deponed that he has been in possession and occupation of title No. Nakuru Municipality, Block 29/1078 (Ronda), since 1980, and before the parcels of land were registered in their current form. He further deponed that the Defendants caused the parcel of land to be registered in the 2nd

Defendant's name more than 12 years before filing this suit and that the 2nd Defendant has not taken any action to take possession of the parcel of land for more than 12 years since obtaining registration of the said parcel of land.

3. The Plaintiff deponed that on or about 16th July, 2025, the Defendants issued him with a notice to vacate the land dated 21st May, 2025, requiring him to vacate the suit land within 90 days. It was his deposition that the Defendants want to use unlawful means to recover the suit land from him more than 12 years after the cause of action arose and they failed to take action and urged the court to grant the orders as sought.
4. The second application is the 2nd Defendant's Notice of Motion application dated 15th October, 2025, which seeks the following orders:
 1. *Spent*
 2. *THAT this honourable court be pleased to order the District Land Registrar Nakuru and District Land Surveyor Nakuru to visit the suit parcel of land known as Nakuru Municipality Block 29/1078 and to file a report with proper sketches with GPS Coordinates communicating the following:*
 - a. *The size of the parcel of land known as Nakuru Municipality Block 29/1078 and establish and re-establish any boundaries thereof.*
 - b. *The current occupation, development and size of occupation of all the occupiers residing on Nakuru Municipality Block 29/1078.*

c. The size of the parcels of land known as Nakuru Municipality Block 29/1078 and their attendant occupation and development.

3. THAT an order do issue transferring the file in Nakuru CMELC E216/25 Simba Paul Eric vs Jackson Kemboi & 8 Others to this Hon Court for consolidation, hearing and determination.

4. THAT costs of this Application be provided for.

5. The application is supported by the annexed affidavit of Jackson Kemboi, sworn on 15th October, 2025, where he deponed that he was sued as an interested party in **Nakuru CMELC E216/25 Simba Paul Eric vs Jackson Kemboi & 8 Others** relating to occupation of the suit parcel with nine other occupants. He further stated that it would be prudent for the file to be transferred to this honourable court for purposes of consolidation and hearing.
6. Mathew Chebon Cherogony, the Plaintiff, filed a Replying Affidavit sworn on 28th October, 2025, where he deponed that the application is bad in law as the applicant's role is to defend the claim against them. Further that he has not been served with any pleadings in Nakuru CMELC E216/2025 and his suit before this court is premised on the notice to vacate issued to him by the Defendants on 21st May, 2025.
7. It was the Plaintiff's deposition that Simba Paul Eric is a proxy to the Defendants and urged the court to dismiss the application with costs.

PLAINTIFF'S SUBMISSIONS

8. Counsel for the Plaintiff filed submissions dated 30th September, 2025 and 21st November, 2025, and submitted that the Plaintiff is challenging the legality of the notice dated 21st May, 2025, based on clear provisions of Sections 7 and 17 of the Limitation of Actions Act. Counsel submitted that the Application dated 18th August, 2025, is for an interim injunction and for the applicant to succeed, he needs to satisfy the principles laid down in the case of **Giella vs Cassman Brown & Co Ltd, 1973 E.A 358**.
9. Counsel submitted that there is evidence that the applicant is in occupation and control of the parcel of land in dispute since the 1980's and if the Applicant is removed from the suit land, he will suffer irreparable damage that cannot be compensated by way of damages.
10. In respect of the Defendant's application dated 15th October, 2025, counsel submitted that there is no pleading before this court to show the link between this suit and the suit in the lower court. Further that there is no evidence as to whether the two suits raise the same questions for determination, hence the Defendants have not established the nexus to warrant the consolidation of the suit.
11. Counsel submitted that the Plaintiff was not served with the pleadings in the other suit and the parties in the lower court matter have no dispute with the Plaintiff and relied on the case of **Law Society of Kenya vs Centre for Human Rights & Democracy & 12 others [2014] eKLR**.

Counsel urged the court to dismiss the application dated 15th October, 2025, with costs.

DEFENDANTS' SUBMISSIONS

12. Counsel for the Defendants filed submissions dated 7th November, 2025, and identified the following issues for determination:
 - a) *Whether the lower court files should be consolidated?*
 - b) *Whether the Land Registrar should visit the land in issue and provide a comprehensive report?*
 - c) *Whether status quo should be maintained?*

13. On the first issue, counsel submitted that the lower court file addresses the issues touching on the same land in issue with the instant proceedings. Counsel further stated that they have annexed the pleadings of the lower court to the Application dated 15th October, 2025, as JK1 and JK2 as well as the interim reliefs that were issued.

14. Counsel submitted that the transfer and consolidation should be allowed and relied on the cases of **Prem Lala Nahata & Another vs Chandi Prasad Sikaria [2007] 2 Supreme Court 551 India Supreme Court, Law Society of Kenya vs Center for Human Rights & Democracy & 12 others [2014] eKLR** and **Nyati Security Guards & Services Ltd vs Municipal Council of Mombasa [2000] eKLR**.

15. On the second issue, counsel submitted that the District Land Registrar should be ordered to proceed to visit the site and file a report as sought in

prayer 2 in the application dated 15th October, 2025, and that twelve individuals have an interest in the parcel of land in the two cases.

16. On the third issue, counsel submitted that if there is any *status quo* to be issued, then it must be in favour of the Plaintiff in Nakuru CMELC E216/25 who currently enjoys interim reliefs. Counsel submitted that the Plaintiff does not own or possess parcel No. NAKURU MUNICIPALITY BLOCK 29/1078 and *status quo* cannot be issued in his favour.

ANALYSIS AND DETERMINATION

17. The issues for determination are as follows:
 - a) *Whether Nakuru CMELC E216/25 should be transferred to this court for consolidation.*
 - b) *Whether the Land Registrar should visit the suit land in issue and provide a comprehensive report?*
 - c) *Whether the court should restrain the Defendants from implementing the notice dated 21st May, 2025?*
18. This court notes that the Plaintiff is not a party in Nakuru ELC Suit No. 216 of 2025 at the Chief Magistrate's Court. Based on the attached annexures in the 2nd Defendant's Notice of Motion application dated 15th October, 2025, the only nexus with the current suit is that the subject matter in both suits is in respect of Nakuru Municipality Block 29/1078. In the case of **Nyati Security Guards & Services Ltd v Municipal Council of Mombasa (2000) eKLR** the Court held as follows:

- a) *“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where: -*
- b) *Some common question of law or fact arises in both or all of them;*
- c) *The rights or reliefs claimed in them are in respect of or arise out of the same transaction;*
- d) *For some other reason, it is desirable to make an order for consolidating them;*

19. For a court to order the consolidation of suits, it must examine the two suits to be and determine whether the same involve common questions of law or fact, whether the reliefs sought arise out of the same transaction, and whether it would be convenient and efficient to consider the same in a consolidated suit. This court notes that, based on the pleadings adduced by the 2nd Defendant in the application dated 15th October, 2025, this court cannot determine the cause of action therein. The Plaintiff that instituted the suit has not been attached, and the Plaintiff stated that he neither is a party nor has been served with the pleadings. It would be difficult to consolidate a suit that is sketchy and not brought before the court to review and make an informed decision.

20. Given this court’s finding above, the 2nd Defendant’s prayer for the District Land Registrar Nakuru and District Land Surveyor Nakuru to visit the suit parcel of land known as Nakuru Municipality Block 29/1078 and file a report cannot be granted as the cause of action in the current suit relates to the legality of the Notice dated 21st May, 2025 and whether the twelve years limitation of actions timeline had lapsed.

21. The Plaintiff urged the court to restrain the Defendants from implementing the notice dated 21st May, 2025, pending the hearing and determination of this suit. In the case of **Rockland Kenya Limited v Elliot White Miller [1994] eKLR**, the court held as follows:

“The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in the action if the matters in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the Plaintiff’s undertaking in damages if the subject-matter of the trial was decided in his favour. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to 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. Such matters are to be dealt with at the trial. Nonetheless, the Court must in the exercise of its discretionary power in this regard be satisfied that the claim in respect of which an interlocutory injunction is sought is neither frivolous nor vexatious: in other words, that there is a serious question to be tried.”

22. Order 40 Rule 1 of the Civil Procedure Rules 2010 provides as follows:
- Where in any suit it is proved by affidavit or otherwise—*
- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*
 - b. that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.*

23. The Plaintiff deponed that he has been in occupation and control of the parcel of land in dispute since 1980's and if he is removed from the suit land, he will suffer irreparable damage that cannot be compensated by way of damages. This court finds that the Applicant is entitled to a temporary injunction and I therefore issue the following orders:

- a) A temporary injunction is hereby issued restraining the Defendants from implementing the notice dated 21st May, 2025, by evicting the Plaintiff from title No. Nakuru Municipality Block 29/1078 pending the hearing and determination of this suit.*
- b) Costs shall be in the cause.*
- c) The application dated 15th October, 2025, is hereby dismissed with each party bearing their own costs.*

DATED, SIGNED AND DELIVERED AT NAKURU THIS 23RD DAY OF DECEMBER 2025.

M. A. ODENY

JUDGE