



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
CASE NUMBER; ELCL SUIT NO. E175 OF 2025

JULIUS MURICHU
GITUARA PLAINTIFF/APPLICANT

-VERSUS-

NANCY WANGARI
MAINA DEFENDANT/RESPONDENT
THE CHIEF LAND REGISTRAR OF LANDS.....2nd
DEFENDANT
KCB BANK PLC.....3rd
DEFENDANT
WILLIAM JOHN WANGA.....4th
DEFENDANT

RULING

Introduction

1. I am called upon to determine two (2) applications, dated 14th April 2025 and 30th May 2025. There are directions made on record on 6th October 2025 that the two applications be disposed of simultaneously. The parties were required to file written submissions thereon.

The First Application (Notice of Motion dated 14th April 2025)

2. The first application in time is that dated 14th April 2025. It is a Notice of Motion brought by the Plaintiff/Applicant under the relevant provisions of the law. In the said application, the Applicant seeks, inter alia, orders that the same be certified urgent, and that pending the inter partes hearing of the application and pending the hearing and determination of the suit, the Defendant be restrained from entering upon, trespassing on, developing, constructing on, or otherwise interfering with the Plaintiff's occupation, possession and quiet enjoyment of the property known as Nairobi/Block 100/244, situated in Runda and measuring approximately 0.2030 hectares. The Applicant also seeks costs of the application.
3. The application is premised on the grounds set out on its face and is supported by the affidavit of the Plaintiff sworn on 14th April 2025. In brief, the Applicant avers that he is the registered proprietor of the suit property, having been issued with a Certificate of Lease on 31st July 2024 following acquisition through Ite Farmers' Co-operative Society Limited (in liquidation).
4. He contends that the Defendant has unlawfully encroached upon the suit property and commenced construction thereon without any colour of right. The Applicant further depones that he has been in possession of the suit property for a considerable period and that the Defendant's actions amount to actionable trespass, which, unless restrained, are likely to occasion irreparable harm. He therefore urges the Court to grant the injunctive orders sought to preserve the suit property pending determination of the suit.

Opposition to the First Application

5. The application is opposed by the Defendant/Respondent through Grounds of Opposition filed in Court. The Defendant contends that the Plaintiff lacks

locus standi to challenge a registered title without enjoining the relevant allocating authority and/or the Ministry of Lands, and further avers that the Plaintiff did not undertake valuation of the suit property nor pay stamp duty to lawfully effect transfer of title. It is also the Defendant's case that the Plaintiff's claim is statute-barred under the Limitation of Actions Act, being founded on alleged rights dating back to the year 1982.

6. The Defendant further asserts that she is a bona fide purchaser for value without notice, and that her title is **protected under section 26 of the Land Registration Act**. She relies on the existence of a court order dated 26th May 2025, which she contends confirms her as the sole and indefeasible owner of the suit property. The Defendant maintains that the Plaintiff has failed to establish a prima facie case to warrant the grant of injunctive relief, and that the balance of convenience and public interest favour the protection of registered title and mortgage-backed investments. Consequently, the Defendant argues that the application is an abuse of the court process and urges the Court to dismiss it with costs.

Plaintiff's Response to the First Application

7. In response to the Defendant's Grounds of Opposition, the Plaintiff filed a Further Affidavit sworn on 11th July 2025, in which he reiterates that he is the registered proprietor of the suit property, Nairobi/Block 100/244, and that no other valid or lawful title exists. He disputes the contention that he lacks locus standi, asserting that his claim is properly before this Court and falls within its jurisdiction, and that the joinder of the Ministry of Lands or any other alleged allocating authority is not mandatory at this stage.
8. The Plaintiff further contends that his claim is not statute-barred, explaining that while he first became aware of fencing activities around the year 2020, actual construction and adverse possession only came to his knowledge on 2nd April 2025, prompting the present application. He maintains that time

did not begin to run earlier owing to ongoing police and DCI investigations, during which he was advised not to interfere with the property.

9. The Plaintiff further challenges the Defendant's assertion that she is a bona fide purchaser for value without notice, contending that she has not demonstrated any lawful transfer or valid title capable of protection under section 26 of the Land Registration Act. He disputes the validity and effect of the court orders dated 26th May 2025, stating that he was not a party to the proceedings that culminated in those orders and that the same were obtained without disclosure of his interest in the suit property.
10. The Plaintiff avers that he has been in open and continuous possession of the suit property since 2006, evidenced by payment of land rates and consistent efforts to secure registration following the liquidation of Ite Farmers' Co-operative Society. He asserts that he has established a prima facie case, that the balance of convenience lies in preserving the status quo, and urges the Court to grant the injunctive orders sought in order to restrain ongoing construction and prevent irreparable harm pending determination of the suit.

The Second Application (Notice of Motion dated 30th May 2025)

11. The second application before the Court is that dated 30th May 2025, filed by the Defendant herein, Nancy Wangari Maina, who is the Applicant in that Motion. The application is brought under **Sections 79 and 80 of the Land Registration Act**, Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B and 3A of the Civil Procedure Act. In the application, the Defendant seeks, principally, a declaratory order that the Certificate of Lease issued to Julius Murichu Gituara in respect of Nairobi/Block 100/244 in the year 2024 is null and void ab initio for having been obtained fraudulently, illegally and/or unprocedurally. She further seeks an order compelling the Chief Land Registrar to cancel the said Certificate of Lease

and rectify the Land Register accordingly, together with costs and such further orders as the Court may deem fit in the interests of justice.

12. The application is premised on the grounds set out on its face and is supported by the affidavit of Nancy Wangari Maina sworn on 30th May 2025. In essence, the Applicant contends that she is the bona fide and lawfully registered proprietor of the suit property known as L.R. No. 12672/148 (I.R. No. 91134), having acquired the same for valuable consideration in 2021 and perfected her title in 2022. She avers that upon acquisition, she took possession of the property, charged it to KCB Bank to secure a loan facility, and commenced substantial commercial development thereon. It is her case that the Plaintiff's Certificate of Lease issued in 2024 constitutes a fraudulent and unlawful parallel title, procured despite the prior existence of her registered title and her open and continuous possession of the land.
13. The Defendant further asserts that the Plaintiff's alleged claim is founded on stale share-based interests dating back to 1982, which were never perfected for over four decades, thereby amounting to laches and acquiescence. She contends that the existence of two parallel titles undermines the principle of indefeasibility of title and compromises the integrity of the Land Register. Reliance is also placed on a consent order issued on 26th May 2025 in separate proceedings, which she contends affirmed her sole ownership of the suit property. On these grounds, the Defendant urges the Court to exercise its statutory mandate under section 80 of the Land Registration Act to cancel the Plaintiff's title and protect her proprietary interests.

Plaintiff's Response to the Second Application

14. In response to the Defendant's Notice of Motion dated 30th May 2025, the Plaintiff/1st Respondent filed a Replying Affidavit, in which he opposes the application in its entirety. He contends that the Defendant's Motion is

procedurally and legally flawed, as it seeks final and determinative orders of cancellation and rectification of title at an interlocutory stage, contrary to section 80 of the Land Registration Act and settled principles of civil procedure. He further challenges the propriety of enjoining the Chief Land Registrar without leave of court or compliance with the Government Proceedings Act, terming the joinder irregular. The Plaintiff asserts that the application raises seriously contested issues of fact, including allegations of fraud, competing titles and possession, which cannot be resolved on affidavit evidence and can only be determined after a full hearing.

- 15.** Substantively, the Plaintiff maintains that he is the lawfully registered proprietor of Nairobi/Block 100/244, having obtained his Certificate of Lease following due process after the lawful conversion and closure of the former register for L.R. No. 12672/148. He disputes the Defendant's alleged title, contending that no valid transfer to her or her purported vendor is reflected in the land register, and that the Defendant's claim is anchored on a closed register rendered inoperative by Gazette Notice.
- 16.** He further avers that the Defendant's assertions of long possession are contradicted by evidence from DCI investigations conducted in 2020, which showed the land to be vacant and undeveloped at the material time. The Plaintiff also disavows the consent orders of 26th May 2025, stating that he was not a party to those proceedings and that the same cannot bind or defeat his registered interest. He therefore urges the Court to find that the Defendant has failed to lay any proper basis for rectification or cancellation of his title and to dismiss the second application with costs.

Affidavits on Record Noted by the Court

- 17.** The Court notes that, in addition to the affidavits filed by the parties, there is on record an Affidavit sworn on 11th July 2025 by Hesbon Mbutia Kiura, who avers to be the duly appointed Liquidator of the Farmers Co-operative

Society Limited. In the said affidavit, the Liquidator confirms that the suit property, formerly known as L.R. No. 12672/148 and now Nairobi/Block 100/244, was allocated to the Plaintiff in 1982, that the Society remained the registered proprietor until the transfer to the Plaintiff, and that no transfer was ever effected in favour of the Defendant or her alleged vendor.

- 18.** He explains the process of liquidation, title conversion pursuant to **Gazette Notice No. 8632 of 2021**, and the delays occasioned by systemic challenges with the Ardhisasa platform, and affirms that the transfer and issuance of the Plaintiff's Certificate of Lease were undertaken lawfully and procedurally. The Liquidator further challenges the validity of the Defendant's alleged title, noting that it is anchored on a closed register, bears irregular entries, and does not reflect any lawful disposition by the Society.
19. The Court also notes that the Plaintiff filed a Supplementary Affidavit sworn on 24th September 2025 in further support of his application dated 14th April 2025 and in response to the Defendant's application dated 30th May 2025, in which he sets out additional matters relating to the regularisation of the transfer and registration of the suit property on the Ardhisasa system.
- 20.** In the said affidavit, the Plaintiff explains the steps undertaken at the Lands Registry to reconstruct and simulate the historical manual transactions in the digital register, the surrender and subsequent reissuance of the Certificate of Lease, and the adjudication of nominal stamp duty limited to system updates. He further avers that updated searches and registry records confirm his proprietorship under the converted title Nairobi/Block 100/244, and reiterates his position that the Defendant's alleged title is anchored on a closed register and is irregular for want of proper execution and compliance with the applicable conversion framework.

Submissions

Plaintiffs Submissions

- 21.** The Plaintiff filed consolidated written submissions dated 25th September 2025 in support of his Notice of Motion dated 14th April 2025 and in opposition to the Defendant's Notice of Motion dated 30th May 2025. He submits that he has satisfied the threshold for the grant of interlocutory injunctive relief as set out in **Giella v Cassman Brown [1973] EA 358**, arguing that he has established a prima facie case, that he stands to suffer irreparable harm due to ongoing construction on the suit property, and that the balance of convenience favours preservation of the status quo.
- 22.** The Plaintiff further contends that the Defendant's application for cancellation of his Certificate of Lease is procedurally incompetent and substantively untenable, as it seeks final orders at an interlocutory stage contrary to section 80 of the Land Registration Act. In support of these propositions, the Plaintiff relies on, inter alia, **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, **Said Ahmed v Manasseh Benga & Another [2019] eKLR**, and **David Peterson Kiengo & 2 Others v Kariuki Thuo [2012] eKLR**.
- 23.** The Plaintiff identifies the key issues for determination as whether he has met the criteria for interlocutory injunctive relief; whether the Defendant's application is procedurally competent; and whether the Defendant has laid a credible legal and evidentiary basis to warrant cancellation of his title. He submits that his title emanates from a lawful chain tracing back to Ite Farmers' Co-operative Society Limited and was duly regularised following conversion of the register pursuant to Gazette Notice No. 8632 of 2021.
- 24.** Conversely, he argues that the Defendant's alleged title is facially irregular, being anchored on a closed register, bearing inconsistent acreage, and

lacking duly authenticated entries. On the question of root of title, the Plaintiff relies on **Munyu Maina v Hiram Gathiha Maina [2013] eKLR** and **Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others [2015] eKLR**, submitting that once the Defendant's title is challenged, she bears the burden of demonstrating its legality, which burden she has failed to discharge. He accordingly urges the Court to allow his application, dismiss the Defendant's application, and award him costs.

Defendants Submissions

- 25.** The Defendant filed written submissions dated 6th October 2025 opposing the Plaintiff's Notice of Motion dated 14th April 2025 and in support of her own application for rectification. She submits that the Plaintiff has failed to satisfy the threshold for the grant of interlocutory injunctive relief under **Giella v Cassman Brown [1973] EA 358**, contending that no prima facie case has been established.
- 26.** It is the Defendant's position that the Plaintiff's Certificate of Lease issued in 2024 is founded on an unlawful and time-barred root, arguing that the alleged allocation by Ite Farmers' Co-operative Society Limited in 1982 was never perfected through payment of stamp duty as required under the **Stamp Duty Act**, and that any equitable interest arising therefrom became statute-barred under the **Limitation of Actions Act** by the mid-1990s. The Defendant submits that the Plaintiff's title is therefore a nullity, incapable of conferring any legal interest.
- 27.** The Defendant further submits that the Plaintiff's claim is barred by the doctrines of res judicata and estoppel by record, relying on a consent order issued on 26th May 2025 in ELC Suit No. E156 of 2025, which she contends affirmed the validity and indefeasibility of her title. She argues that allowing the Plaintiff to challenge her title would amount to a collateral attack on an

existing court decree, contrary to the principles in **Henderson v Henderson**.

- 28.** On the balance of convenience, the Defendant submits that she is a bona fide purchaser for value without notice, is in possession, and has undertaken substantial development financed through a bank charge, and that halting construction would occasion her grave financial prejudice and undermine secured lending. She invokes the doctrines of laches and equity, contending that the Plaintiff slept on his rights for over four decades, and urges the Court to dismiss the Plaintiff's application, allow her application for rectification, declare the Plaintiff's Certificate of Lease null and void, and award her costs.
- 29.** Before delving into the issues for determination and the analysis thereof, the Court notes that at the time the applications dated 14th April 2025 and 30th May 2025 were filed, the Chief Land Registrar, KCB Bank PLC, and William John Wang'a, who have been referred to in subsequent pleadings as the 2nd, 3rd and 4th Defendants respectively, were not parties to the suit. The Court therefore proceeds to consider the two applications on the basis of the parties properly before it at the material time.

Issues for Determination

- 30.** Having considered the pleadings, affidavits and submissions on record, the Court is of the view that the following issues arise for determination:
- a) Whether the Plaintiff has established a case for the grant of interlocutory injunctive relief.
 - b) Whether the Defendant has established a basis for the interlocutory cancellation or rectification of the Plaintiff's Certificate of Lease under

section 80 of the Land Registration Act.

c) Whether, at an interlocutory stage, the Court can grant the reliefs sought in either application.

d) What orders ought to issue on costs

Analysis and Determination

Whether the Plaintiff has established a case for the grant of interlocutory injunctive relief

31. The applicable principles governing the grant of interlocutory injunctions are well settled. They were set out in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, and have been restated and clarified in numerous subsequent decisions, including **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**. An applicant must demonstrate: first, the existence of a prima facie case with a probability of success; secondly, that he stands to suffer irreparable injury which would not be adequately compensated by an award of damages; and thirdly, if the Court is in doubt, that the balance of convenience tilts in his favour. These principles are sequential and not conjunctive, such that the failure to establish a prima facie case is fatal to the application.
32. A **prima facie case** was defined in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** as a case which, on the material presented, shows that there exists a right which has apparently been infringed by the opposite party, calling for an explanation or rebuttal. At this stage, the Court is not required to make definitive findings on contested matters of fact or law, nor to examine the merits of the case exhaustively. As was emphasised in **Nguruman Limited v Jan Bonde Nielsen & 2**

Others (supra), the Court must resist the temptation to delve into a detailed evaluation of evidence, as that is the province of the trial.

33. In the present case, the Plaintiff's claim to injunctive relief is anchored on his assertion of registered proprietorship of the suit property pursuant to a Certificate of Lease issued in July 2024. Under **section 24(a)** and **section 25(1)** of the **Land Registration Act**, registration confers upon a proprietor absolute ownership together with all rights and privileges appurtenant thereto, subject only to the encumbrances and conditions noted in the register. Further, **section 26(1)** of the Act provides that a certificate of title shall be taken by the courts as prima facie evidence that the person named therein is the absolute and indefeasible owner, unless the title is shown to have been acquired through fraud, misrepresentation, illegality or a corrupt scheme.
34. At an interlocutory stage, and in the absence of a full evidentiary inquiry, a registered title enjoys statutory protection. As held in **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**, once a registered proprietor places his title before the Court, the evidential burden shifts to the party challenging that title to demonstrate, through cogent evidence, the illegality or impropriety alleged. Allegations of fraud and illegality, while pleaded by the Defendant, are matters that ordinarily require strict proof and a full hearing.
35. On the second limb, the law is clear that irreparable harm refers to injury that cannot be adequately remedied by damages. In land disputes, courts have consistently held that land is a unique and finite resource, and where the subject property is threatened with permanent alteration through construction or development, damages may not always be an adequate

remedy.

36. As regards the balance of convenience, this consideration only arises where the Court is in doubt. The purpose of an interlocutory injunction is to preserve the subject matter of the suit pending hearing and determination. As stated in **David Peterson Kiengo & 2 Others v Kariuki Thuo [2012] eKLR**, the Court should lean towards preserving the status quo so that the suit is not rendered nugatory.
37. Without making any conclusive findings on the merits of the competing claims, the Court is satisfied that the Plaintiff has demonstrated, at least prima facie, an arguable case grounded in registered proprietorship, and that the threatened acts complained of raise a legitimate concern warranting the Court's intervention at an interlocutory stage, subject always to the determination of the suit on its merits.

Whether the Defendant has established a basis for the interlocutory cancellation or rectification of the Plaintiff's Certificate of Lease under section 80 of the Land Registration Act

38. The Defendant's application dated 30th May 2025 invites the Court to exercise its powers under **section 80 of the Land Registration Act** to cancel and rectify the register by nullifying the Plaintiff's Certificate of Lease. The statutory framework governing rectification is, however, clear and circumscribed. **Section 80(1)** empowers the Court to order rectification of the register where it is satisfied that a registration was obtained, made or omitted by fraud or mistake. However, **section 80(2)** places an express limitation on that power by protecting the title of a proprietor in possession, unless such proprietor is shown to have acquired the land through fraud or misrepresentation to which he was a party.
39. The jurisprudence of this Court has consistently held that the power to cancel or rectify title is a drastic and final remedy, which should ordinarily

be exercised after a full hearing and not at an interlocutory stage, save in the clearest of cases. In **Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others [2015] eKLR**, the Court of Appeal emphasised that cancellation of title requires strict proof of fraud and a careful interrogation of the chain of title. Similarly, in **Republic v Land Registrar, Kajiado & Another ex parte David Peterson Kiengo [2016] eKLR**, the Court held that rectification under section 80 is not to be undertaken lightly and must be grounded on clear, uncontested evidence.

40. At an interlocutory stage, the Court is constrained by the nature of affidavit evidence and the absence of cross-examination. Where allegations of fraud, illegality, or procedural impropriety are raised and are hotly contested as is the case here the Court must exercise restraint. This position was reiterated in **Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] eKLR**, where the Court held that issues touching on fraud and competing titles are best resolved at trial, after parties have had an opportunity to present viva voce evidence.
41. Further, the Defendant's application seeks final and determinative reliefs namely, the nullification of the Plaintiff's Certificate of Lease and rectification of the register. Courts have repeatedly cautioned against granting final relief at an interlocutory stage, as this would have the effect of pre-empting the suit and denying parties the right to a full hearing. In **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal warned that interlocutory applications should not be used to conclusively determine substantive rights that are yet to be adjudicated.
42. In light of the foregoing principles, and without making any definitive findings on the legality or propriety of the competing titles, the Court finds that the Defendant has not demonstrated that this is one of the clearest of

cases warranting the exercise of the Court's rectification powers at an interlocutory stage. The issues raised in the Defendant's application go to the very root of the parties' respective claims and can only be properly determined upon a full hearing on the merits.

Whether, at an interlocutory stage, the Court can grant the reliefs sought in either application

43. It is a settled principle of civil procedure that interlocutory applications are not intended to finally determine the substantive rights of parties. The purpose of interlocutory relief is preservatory, aimed at maintaining the status quo pending the hearing and determination of the suit. Courts have consistently held that they must exercise caution not to grant orders at an interim stage that would have the effect of disposing of the suit or rendering the trial superfluous.
44. In **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal underscored that interlocutory remedies are discretionary and are not meant to resolve contested questions of fact or law conclusively. Similarly, in **Agip (Kenya) Ltd v Vora [2000] 2 EA 285**, the Court held that a mandatory or final order at an interlocutory stage should only be granted in the clearest of cases, where the matter is plain and uncontested.
45. **In the present matter, the Plaintiff seeks interlocutory injunctive relief to restrain interference with the suit property, while the Defendant seeks declaratory orders and rectification of the land register, including cancellation of the Plaintiff's Certificate of Lease. The latter reliefs are, by their very nature, final and determinative, as they go to the root of proprietorship and would conclusively determine the dispute without** a full hearing. Granting

such orders at this stage would offend the principles of procedural fairness and the right of parties to be heard fully on contested issues.

46. On the other hand, the grant of a temporary injunction, if warranted, does not determine ownership but merely preserves the subject matter of the dispute. As stated in **Suleiman v Amboseli Resort Limited [2004] 2 KLR 589**, the Court's role at the interlocutory stage is to adopt a lower risk approach by preserving the property in dispute until the rights of the parties are conclusively determined.
47. Accordingly, while the Court may, in appropriate cases, grant preservative relief pending trial, it cannot properly grant **substantive and final reliefs**, such as cancellation of title or declaratory orders on ownership, at an interlocutory stage where the issues are hotly contested and require a full evidentiary inquiry.
48. Having considered the two applications, the affidavits on record, the rival submissions, and the applicable principles of law, and for the reasons set out in the foregoing analysis, the Court now makes the following orders:
 - a) The Plaintiff's Notice of Motion dated 14th April 2025 is allowed to the extent that a temporary injunction is hereby issued restraining the Defendant, whether by herself, her agents, servants or anyone acting under her authority, from entering upon, trespassing on, developing, constructing on, or otherwise interfering with the Plaintiff's occupation, possession and quiet enjoyment of Nairobi/Block 100/244, pending the hearing and determination of the suit.
 - b) The Defendant's Notice of Motion dated 30th May 2025 is dismissed.

c) Costs of both applications shall be in the cause.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **19TH day** of **December, 2025.**

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Ms. Kariuki..... for the Plaintiff/Applicant

No Appearance for the 1st and 2nd Defendant/Respondent

Nabirike..... for the 3rd Defendants

Philomena W..... Court Assistant