

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI

ELC L CASE NO. E486 OF 2025

DAVID MURIUKI 1ST

PLAINTIFF

GEORGE WANYONYI HAMISI 2ND

PLAINTIFF

SYLVANUS KASITI 3RD

PLAINTIFF

***(Suing as Members of Board of Management of
NORTH HIGHRIDGE PRIMARY SCHOOL, NAIROBI)***

VERSUS

MOHAMED ADAN KHALIF 1ST

DEFENDANT

ASILI HILLS APARTMENTS 2ND

DEFENDANT

NAIROBI CITY COUNTY..... 3RD

DEFENDANT

ELC L CASE NO. E486 OF 2025

Ruling

**COUNTY EXECUTIVE COMMITTEE
MEMBER - BUILT ENVIRONMENT
AND URBAN PLANNING SECTOR 4TH**

DEFENDANT

STEPHEN GATHUITA MWANGI 5TH

DEFENDANT

NATIONAL LAND COMMISSION 6TH

DEFENDANT

LAND REGISTRAR, NAIROBI 7TH

DEFENDANT

NATIONAL CONSTRUCTION AUTHORITY 8TH

DEFENDANT

**NATIONAL ENVIRONMENT
MANAGEMENT AUTHORITY 9TH**

DEFENDANT

RULING

1. What is before Court for determination are the Plaintiff's Notice of Motion application dated the 25th September, 2025 and the 2nd Defendant's Notice of Preliminary Objection dated the 4th November, 2025. In the Notice of Motion

application dated the 25th September, 2025, the Plaintiff seeks the following Orders:

- **Spent**
- **Spent**
- **That pending the hearing and determination of this suit, this Honourable Court be pleased to issue temporary orders of injunction restraining the 1st Defendant/Respondent, his agents, servants, professionals and contractors including but not limited to the 2nd Defendant/Respondent and/or any other person from excavating and undertaking any development activities on the part/portion/section numbered 209/21526 (original 209/12673) of the Plaintiff/ Applicant's school land situated on 6th Parklands Avenue in Parklands, Nairobi.**
- **That an Order be issued compelling the 3rd, 4th, 8th and 9th Respondents to ensure compliance with**

payers (2) and (3) above.

- **That the OCS Parklands Police Station be ordered to provide security during the enforcement of the orders granted herein.**
- **That this Court grant any other order deemed just and expedient.**
- **That the costs of this application be provided for.**

2. The application is premised on grounds on its face and the supporting affidavit of DAVID MURIUKI. The Plaintiff contends that in 1995, some people started encroaching and grabbing their land by inter alia excising parts/portions/sections of school land numbered 209/12673, 209/12672, 209/12671, 209/12670 and 209/132279, erecting posts and fences on parts of the school property, constructing site offices, attempting to build permanent residential structures and taking over/occupying the school principals' residential house. Further, that the 1st Defendant

has continued to undertake illegal developments on the portion number 209/215256 (original 209/12673) and is currently excavating the said portion, in contravention of Articles 40, 42, 69 and 70 of the Constitution as well as Physical and Land Use Planning Act, the Environmental Management and Coordination Act and National Construction Act.

3. The application was opposed.
4. The 2nd Defendant's Notice of Preliminary Objection dated the 4th November, 2025 is based on the following grounds:

a. That the Honourable Court's jurisdiction is ousted as the Plaintiffs' suit is incurably statute barred by virtue of the mandatory provisions of section 7 of the Limitation of Actions Act (Cap 22, Laws of Kenya). The Plaintiffs expressly plead at paragraph 18 of the Plaint that their cause of action, being the alleged encroachment and grabbing of land, arose 'on or about the year 1995'. The suit, having been filed in 2025,

is thirty (30) years after the alleged cause of action arose and is therefore file well outside the twelve (12) year limitation period for actions to recover land.

b. That the suit against the 2nd Defendant is incompetent, a nullity ab initio, and should therefore be struck out, as the entity sued as the 2nd Defendant (Asili Hills Apartments) is not a legal person known to law and lacks the legal capacity to sue or be sued.

c. That the Plaintiff, on its face, discloses that the Plaintiffs are guilty of gross and inordinate laches, having waited thirty (30) years to agitate a claim they were allegedly aware of. Their prolonged and unexplained delay and acquiescence disentitles them from the equitable remedies of injunction and any other relief sought from this Honourable Court.

5. The 1st Defendant also filed a Notice of Preliminary Objection disputing the jurisdiction of the Court and insisting that this suit is statute barred.

6. The 8th Defendant opposed the Plaintiffs' application by filing a replying affidavit sworn by Arch. Stephen Mwilu who confirmed that the 1st Defendant adhered to all the legal processes and resumed developing the suit property, after they had initially stopped any developments thereon.
7. The instant application and Notices of Preliminary Objection were canvassed by way of written submissions.

Analysis and Determination

8. Upon consideration of the instant Notice of Motion application, Notices of Preliminary Objection, respective affidavits and rivalling submissions, the following are the issues for determination:
 - a. Whether the Plaintiff has established a prima facie case to warrant the orders of interlocutory injunction as sought.
 - b. Whether the Notices of Preliminary Objection are merited.

Whether the Plaintiffs have established a prima facie case to warrant the orders of interlocutory injunction as sought.

9. The Plaintiff has sought to restrain the 1st Defendant from developing suit land which fact is opposed by some of the Defendants. In line with the principle established in the case of **Giella v Cassman Brown & Co Ltd (1973) E A 358**, I will proceed to decipher whether the Plaintiffs have established a prima facie case to warrant the orders of interlocutory injunction as sought.
10. I will further rely on the definition of a prima facie case as articulated in the case of **Mrao Ltd v First American Bank Limited (2003) KLR 125** where the Court described it as follows:

“..... is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party

as to call for an explanation or rebuttal from the latter”.

11. The Plaintiffs claim the 1st Defendant has encroached on the school land and commenced developing it. The 1st and 2nd Defendants filed Notices of Preliminary Objection to oppose the instant application and insisted that the suit is statute barred. The 8th Defendant opposed the instant application and contended that the 1st Defendant adhered to all the legal processes, hence they allowed it to commence development on the disputed land.

12. Looking at documents the Plaintiffs have presented, I note they provided a history of the disputed land but failed to file any documents to support their claim on suit land. They further admitted that the larger parcel of land had been subdivided and that the 1st Defendant purchased his land from one Richard Maore Maoka. The Plaintiffs claim that the 1st Defendant’s title is a forgery but I find that this is an issue

that cannot be determined at an interlocutory stage but once viva voce evidence is adduced.

13. It is trite that injunctive remedies are equitable remedies and parties

seeking the same must demonstrate a prima facie case. At this juncture, noting that there are no clear documents to support the Plaintiffs' claim, I opine that injunctive reliefs being sought are premature. Further, I note the 8th Defendant admits granting an approval to the 1st Defendant to commence developments on the suit land. It is my considered view that since the 1st Defendant was granted development permission to develop his land, with the government entities concerned with the process admitting this position, I am unable to restrain him from his property.

14. In the circumstance, I find that the Plaintiffs have not established a prima facie case as against the Defendants to warrant the orders of interlocutory injunction as sought.

15. In further associating myself with the decision of **Nguruman Ltd. Vs. Jan Bonde Nielsen (2014) eKLR** where the Court of Appeal held that where a party has failed to establish a prima facie case, the court need not proceed to make a determination of the other two limbs on injunction and I will hence decline to do so.

Whether the Notices of Preliminary Objection are merited.

16. I note the two Notices of Preliminary Objection revolve around the fact that this suit is statute barred since the Plaintiffs admitted that the alleged encroachment commenced in 1995. I note the 1st and 2nd Defendants are yet to file their respective Defences. It is trite that a Notice of Preliminary Objection has to be anchored on a pleading. At this juncture, I opine that the Notices of Preliminary Objection are premature as they are not anchored on any pleading.

17. In the foregoing, I find the instant Notice of Motion application unmerited and will dismiss it. I however find the Notices of Preliminary Objection premature and will strike them out. I direct all the Defendants except the 8th and 9th Defendants to file and serve their respective Defences within fourteen (14) days from the date hereof.

18. Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
15TH DAY OF JANUARY, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Ndambiri for Plaintiff/Applicant

Ndegwa holding brief for Nyiha for 2nd Defendant

Kwamboka holding brief for Otieno for 1st Defendant

Ms Munguti for 3rd, 4th, 5th Defendants

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Cindy Ogola for 8th Defendant

Court Assistant: Joan

ORIGINAL