

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLOS NO. E028 OF 2025

JOEL **ONAMI**
MICHIEKA.....PLAINTIFF/APPLICANT

-VERSUS-

LIVINGSTONE **GITONGA** **MUCHUNGI.....1ST**
DEFENDANT/RESPONDENT

JAMES **MUSAU** **KIMEU.....2ND**
DEFENDANT/RESPONDENT

CHARLES **KAMARI.....3RD**
DEFENDANT/RESPONDENT

RULING

1. The plaintiff/applicant filed three applications which shall be determined concurrently. The first application is the notice of motion dated 21st July, 2025 expressed to be brought under **Sections 1,1A,1B,3,3A 63(c) and (e) of the Civil Procedure Act, and Order 40 Rules 1,2,3,4 & 8, and Order 51 Rule 1 of the Civil Procedure Rules** seeking the following orders:-

1. Spent.

2. Spent.

3. *The Defendants whether by themselves, agents or servants or otherwise howsoever be restrained from entering upon, evicting the Plaintiff, dumping, offering security, trespassing alienating, leasing, putting up public notices, offering for sale, selling, mortgaging, charging or otherwise interfering with the Plaintiffs quiet*

possession of Plot No.132 LR. NO. 13330/142 (Original L.R NO. 4921/3/R) pending the hearing and determination of the suit.

4. This Honorable Court be pleased to direct the OCPD, OCS and/or DCIO Kasarani/Ruaraka/Marurui Police Station to enforcement of this Court's Orders and ensure compliance therewith.

5. The costs of this application be borne by the Defendant.

6. Such other or further Orders and directions as may appear to this Honorable Court to be just and convenient in the circumstances.

2. The application is premised on the grounds on its face, and further supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that the suit property known as plot no.132 LR. No. 13330/142 (Original L.R NO. 4921/3/R is situated in Nairobi along Thika road within Thome area. He deposed that together with his family, they are in possession of the suit property having been in occupation and carrying on business since the year 1989 to date.

3. The plaintiff/ applicant deposed that he is aware that the suit land is registered in the defendants'/respondents' names, and that he has served the defendants who entered appearance but failed to

file a defence or move the court appropriately. Since he filed this suit, the plaintiff/applicant claims that the defendants/respondents have tried to employ all the tricks in an attempt to evict him from the suit property, including but not limited to trying to employ goons to evict him from the property.

4. The plaintiff/applicant deposed that he has been in continuous occupation of the property uninterrupted since 1989, even paying the utilities including electricity over the suit property, and that he is entitled to be the registered owner of the suit property by way of adverse possession, given that there were no previous attempts to evict him from the property before the filing of this suit.
5. That having substantially invested in the suit property over the years, the plaintiff/applicant deposed that it is only through the intervention of this court that he can secure his investment in his old age as he is 88 years old, and thus prays for the orders sought.
6. The second application filed by the plaintiff/ applicant is dated 29th July, 2025 and it is expressed to be brought under **Sections 1,1A,1B,3,3A 63(c) and (e) of the Civil Procedure Act, and Order 40 Rules 1,2,3,4 & 8, and Order 51 Rule 1 of the Civil Procedure Rules** seeking the following orders:

- 1. Spent.**
- 2. Spent.**
- 3. That the Defendants whether by themselves, agents or servants or otherwise howsoever be restrained from entering upon, evicting the Plaintiff, dumping, offering security, trespassing alienating, leasing, putting up public notices, offering for sale, selling, mortgaging, charging or otherwise interfering with the Plaintiffs quiet possession of Plot No.132 LR. NO. 13330/142 (Original L.R NO. 4921/3/R) pending the hearing and determination of the suit.**
- 4. THAT in the alternative an order of status quo over the suit property being Plot No.132 LR. NO. 13330/142 (Original L.R NO. 4921/3/R) be issued pending the hearing and determination of this application and the suit subsequently.**
- 5. This honourable court be pleased to direct the OCPD, OCS and/or DCIO Kasarani/Ruaraka/Marurui Police Station to enforcement of this Court's Orders and ensure compliance therewith.**
- 6. The costs of this application be borne by the Defendant.**
- 7. Such other or further Orders and directions as may appear to this honorable court to be just and convenient in the circumstances.**

7. The application is premised on the grounds on its face, and further supported by the affidavit of the plaintiff/applicant sworn on even date. He deposed that he had filed the earlier application requesting the court to issue an injunctive order barring the defendants/respondents from harassing him, but the court declined to issue the orders but instead gave directions for inter partes hearing.
8. He deposed that it has now come to his attention, that the defendants/respondents and other parties have been involved in another court case in Milimani ELC Case No.577 of 2012, which he has never been party to and does not know any other parties apart from the defendants/respondents herein.
9. The plaintiff/applicant deposed that it is only upon serving the defendants/respondents with the application dated 21st July, 2025 and the instant suit that they decided to seek police assistance to get possession of the suit property on 14th July 2025, two months after he had already filed the instant suit. He deposed that he is still on the suit property and no notice has been issued. He termed the actions of the defendants/respondents an afterthought after learning of his intention to have the suit property registered in his name and that their actions are aimed to defeat the course of justice.

10. The plaintiff/applicant deposed that it is in the interest of justice that the orders sought be enforced, and that failure to do so will render the whole suit nugatory as he has called the suit property home for the last 39 years uninterrupted and has substantially developed the same.

11. The third application is the chamber summons dated 18th August 2025 expressed to be brought under **Rule 3 (1)** and **2** of the **High Court (Practice and Procedure Rules)** and **Section 10** of the **Judicature Act** for the following orders:-

1. *Spent.*

2. *That the applicant's application dated the 18th of August, 2025, for an order of injunction and/or issuance of an order or status quo against the respondent herein be admitted and heard during the present High Court Vacation.*

3. *That the costs of this application be provided for.*

4. *That, this honourable court be pleased to give such further orders as it may deem fit to meet the interests of justice.*

12. The application is premised on the grounds inter alia that on 29th July, 2025 this court issued an order of order of status quo against

the defendants/ respondents with directions that the same be served upon the said defendants/ respondents.

- 13.** The application is further supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that despite having been served with the status quo orders of this court issued on 29th July, 2025, a day after service on 2nd August, 2025, the defendants/respondents went ahead to instruct movers and caterpillars who entered upon the suit property to demolish and destroy the suit property.
- 14.** That after attacking and demolishing the property, he later regained control of the property and has even started erecting another wall at the place that was destroyed. The plaintiff/applicant deposed that he is apprehensive now that the orders have been set aside, the defendants/respondents may strike again and cause more damages and even proceed to dispossess him of the suit property. He deposed that the defendants/applicants moved the court based on many allegations, falsehoods, innuendos, malice and bad faith, thereby misdirecting the court, and further, that the orders obtained herein need to be vacated.

- 15.** The 2nd defendant/respondent filed the replying affidavit sworn on 24th October, 2025 in response to all the three applications on his behalf and on behalf of the other defendants/respondents. He deposed that the plaintiff/applicant's applications do not meet the threshold for grant of the orders sought as he seeks to relitigate matters that were already determined in Milimani ELC No. 577 of 2012 and Civil Appeal No.271 of 2020. He further deposed that they are the registered owners of the suit property, and denied that the plaintiff/applicant has been in occupation for over 30 years as alleged as they asserted their rights over it.
- 16.** The 2nd defendant/respondent further deposed that the suit property has been the subject matter of litigation by the plaintiff/applicant's relatives namely Richard Nyamwange Michieka and Monica Nyamwange, who were found by the court to be trespassers thereto and the suit property was determined to belong to them, with the said parties being ordered to surrender vacant possession of the same to the defendants/respondents herein. It is thus the 2nd defendant's/ respondent's contention that the plaintiff/applicant is a proxy to the parties in the previous suit aimed at laying another bid to the suit property. He contends that this suit offends *res-judicata*.

- 17.** The 2nd defendant/respondent deposed that during the hearing of the previous ELC suit, Richard Nyamwange testified that the plaintiff/applicant is his relative and the caretaker of the suit property. He deposed that they are in the process of enforcing the decreed orders issued on 5th May, 2020 and by the Court of Appeal on 7th June, 2024.
- 18.** With reference to the previous interim status quo orders obtained by the plaintiff/applicant on 30th July, 2025, the 2nd defendant/respondent deposed that they were not served with the application as ordered by the court, as evidenced in the affidavit of service which claimed to have served them through an erroneous email address with 2 domain names. In conclusion, he contended that the plaintiff/applicant lacks a valid claim in law nor does he disclose any reasonable cause of action against them.
- 19.** This court directed that the three applications be canvassed through written submissions. The plaintiff/applicant did not file his written submissions. The defendants/respondents filed their written submissions dated 24th October, 2025. I have carefully analysed and considered the applications, the replying affidavit, and the written submissions filed by the defendants/respondents. The issue for determination is *whether the applications have merit*.

20. The plaintiff/applicant's main prayer in the applications is a prayer for the grant of orders of injunction against the defendants/respondents, restraining them from interfering with the suit property, or an alternative order of status quo.

21. **Section 63 (c) of the Civil Procedure Act** provides for the courts power to grant temporary injunctions and states that:-

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold.”

22. **Order 40 Rule 1 of the Civil Procedure Rules** provides for instances in which temporary injunctions may be granted and states 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.....

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 conditions set for consideration in granting an injunction are now well settled in the case of **Giella vs Cassman Brown & Company Limited (1973) E A 358**, where the court expressed itself on the conditions that a party must satisfy for the court to grant an interlocutory injunction:-

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

24. To succeed in an application for injunction, one must be able to show a prima facie right that needs to be protected. The defendants/ respondents relied on the holding of the Court of Appeal in the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR** where the court held that:

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the

irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed."

25. The plaintiff/applicant's claims a right of adverse possession over the suit property. This can only be established upon the full hearing and determination of the suit. This court takes notice of the orders issued in ELC 577 of 2012 on 30th of January, 2025 marked as "JMK-4" to the 2nd defendant/ respondent's replying affidavit, ordering that vacant possession of the suit property to be delivered to the defendants/respondents. These orders were issued by a competent court and this court does not have the power to override

or stay the same. Thus, the court cannot stop the enforcement of a valid court order.

26. If the plaintiff/applicant wishes to have his claim over the suit property validated, he must go through the full process of hearing and determination to ascertain any rights that he may have over the suit property. In this case, the balance of convenience lies in favour of the defendants/respondents.
27. From the above, this court finds that the notices of motion dated 21st July 2025, 29th July 2025, and 18th August, 2025 totally lacking in merit, and they are all hereby dismissed with costs to the defendants/ respondents.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 19TH DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
19/01/2026.**

In the presence of:

Ms. Vena Aron - Court assistant

Mrs. Maina for the Defendants/Respondents

Ms. Namukhulu holding brief for Mr. Were for the Plaintiff/Applicant