



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELCL (OS) CASE NO. E008 OF 2025**

**LILIAN ANJURI** ..... **PLAINTIFF** **KAGWIRIA**

**=VERSUS=**

**MARGARET KAROKI GUANTAI**  
**FIDIS KAGENDO** (*Sued as the Legal Representatives or Administrators of the Estate of GUANTAI KWARIA*).....**DEFENDANTS**

**RULING**

1. On 3/4/2025, **Lilian Kagwiria Anjuri** took out an originating summons dated 28/3/2025 against the estate of the late Guantai Kwaria in which she sought to be declared to have acquired the whole of land parcel number **Abothuguchi/Gaitu/1279** through adverse possession. Subsequent to filing the suit, she brought a notice of motion dated 8/4/2025, seeking an interlocutory injunction restraining the administrators of the estate [the defendants] against interfering with her possession, occupation and utilization of the said land, pending the hearing and disposal

of the originating summons. The said application is the subject of this ruling.

2. The application was premised on the grounds outlined in the motion and in the applicant's supporting affidavit dated 8/4/2025. The respondent opposed the application through a replying affidavit sworn by **Margaret Karoki Guantai** on 8/7/2025. Parties did not tender and exchange submissions as directed. On 22/10/2025, counsel for the respondent informed the court that parties had opted to rely on their affidavits. The application now falls for determination.
3. The case of the applicant/plaintiff is that vide a sale agreement dated 15/3/1997, she purchased land parcel number **Abothuguchi/Gaitu/1281** [*hereinafter referred to as "parcel number 1281"*] from the late **Moses Guantai Kwaria** at an agreed purchase price of Kshs 70,000 which she paid in full. However, during the process of taking possession, the deceased confused the location of the parcels on the ground and showed her parcel number **Abothuguchi/Gaitu/1279** [*hereinafter referred to as "parcel number 1279"*]. As a consequence of the confusion, she has been in continuous and uninterrupted possession of parcel number 1279 since 1997 and she has developed the land extensively. She adds that subsequent to the sale, the deceased sold parcel number 1281 to a different party and conveyed it to that party. She further states that subsequent to that, the deceased and herself attended the Land

Control Board at Gatimbi and obtained a consent to transfer parcel number 1279 [sic] but the said consent got lost.

4. It is the case of the applicant that she was all along under the mistaken belief that she was in occupation of land parcel number 1281 while in actual sense she was in occupation of parcel number 1279.
5. She contends that the administrators of the estate of the deceased seller have now embarked on evicting her from parcel number 1279 and have threatened her life. She urges the court to grant her the interlocutory relief.
6. As earlier observed, the defendants/respondents opposed the application through a replying affidavit sworn on 8/7/2025 by Margaret Karoki Guantai. The case of the estate is that the plaintiff's possession of the suit land was not adverse because it stemmed from a mistake and was initially permissive. They add that the initial permission was revoked. It is their case that the plaintiff never intended to possess the land as an adverse possessor, adding that she occupied the land under the mistaken belief that it was the land she had purchased. They argue that permissive possession is inconsistent with adverse possession, adding that time did not start running for the purpose of adverse possession until the permission was revoked. Their case is that the plaintiff's occupation of the suit land was not and is not adverse and does not confer to the plaintiff legal rights to enable her obtain the injunctive relief. They fault the plaintiff for failing to provide evidence of obtention of

consent of the Land Control Board, contending that her claim that the consent got lost is barefaced. They urge the court to reject the application.

- 7.** The court has considered the application and the response to the application. The single question falling for determination in this ruling is whether the application meets the criteria upon which a trial court exercises jurisdiction to grant an ordinary interlocutory injunction. The relevant criteria was outlined by the Court of Appeal for East Africa in ***Giella v Cassman Brown & Co Ltd [1973] EA 358***. First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is expected to demonstrate that he would suffer damage that may not be adequately indemnifiable through an award of damages if the plea for an interlocutory injunction is declined. Third, should the court have doubt on both or either of the above two, the application is to be determined on the basis of the balance of convenience.
- 8.** Over the years, our superior courts have developed the principle that, as a general rule, definitive and conclusive pronouncements should not be made on the key issues in the dispute at the stage of disposing the plea for an interlocutory injunction. Definitive and conclusive pronouncements on key issues are to be reserved for the final disposal of the dispute.

- 9.** Does the application meet the above criteria? Purchase of land from the deceased has not been contested. Payment of purchase price has also not been contested. Occupation of parcel number 1279 by the plaintiff from 1997 to date has, similarly, not been contested. What is contested is the contention that the plaintiff became an adverse possessor of parcel number 1279. This is a key issue in the dispute. Parties will be expected to canvass their respective positions through evidence and submissions. Given the above circumstances, the court takes the view that this application merits determination on the basis of the balance of convenience. The plaintiff having demonstrated that she has been in uninterrupted possession of the suit land since 1997 pursuant to a purchase, and that her denial of the interlocutory injunctive relief would result in her being uprooted from land which she has occupied and developed for close to 30 years, the balance of convenience favours granting her the interlocutory injunction. That is the finding of the court. Costs of the application shall be in the cause.
- 10.** In the end, for the above reasons, the application dated 8/7/2025 is allowed in terms of **prayers 3** and **4**. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF JANUARY, 2026.**

**B M EBOSO [MR]**

**ELC JUDGE**

ORIGINAL