



Liban v Mainko & Mainko (Administrators of the Estate of Jeremiah Mainko Kidiyenye - Deceased) & another (Environment and Land Case E128 of 2025) [2026] KEELC 242 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEELC 242 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E128 OF 2025
MD MWANGI, J
JANUARY 27, 2026**

BETWEEN

ENOW ISSAK LIBAN PLAINTIFF

AND

**ESTHER NYAMBURA MAINKO & DANIEL LANTEI MAINKO
(ADMINISTRATORS OF THE ESTATE OF JEREMIAH MAINKO KIDIENYE -
DECEASED) 1ST DEFENDANT**

EDWARD NJOROGE 2ND DEFENDANT

RULING

(In respect of the application by the Plaintiff for an order of temporary injunction and the application by the 2nd Defendant seeking to strike out the Plaintiff's suit)

Background

1. The Plaintiff in this case initiated this suit by way of the plaint dated 29th September 2025. Alongside the suit, the Plaintiff filed the notice of motion application of even dates seeking an order of temporary injunction restraining the Defendants/Respondents from entering, trespassing, damaging, alienating, building, erecting structures, cultivating, sub-dividing, selling, wasting, damaging or in any other manner dealing with the parcel of land known as L.R. No. Kjd/Kitengela/19745 (hereinafter referred to as the suit property, pending the hearing and final determination of the suit. The Plaintiff also sought an order directing the Land Registrar, Kajiado, to issue and or place a Land Restriction on the title of the suit property prohibiting any transactions thereof until hearing and determination of the suit.
2. In the plaint, the Plaintiff described himself as a bona fide innocent purchaser for value of the suit property, which he purchased from the Estate of Jeremiah Mainko Kidienyi -deceased. The 1st Defendant, according to the Plaintiff, were the custodians of the suit property, heir, beneficiary,



beneficiaries, vendors and administrators of the Estate of Jeremiah Mainko Kidiyeni. The Plaintiff insisted that the suit property at all material times was vacant, unoccupied, uncultivated, untilled and or otherwise uninhabited by anyone. He alleges that he purchased it in its vacant state and it has remained so even at the time of filing suit.

Introduction

3. The Court is seized of two applications which were heard concurrently. The first application is the Notice of Motion dated 29th September 2025 filed by the Plaintiff/Applicant, Enow Issak Liban. The second application is the Notice of Motion dated 27th October 2025 filed by the 2nd Defendant/Applicant, Edward Njoroge.
4. In the Notice of Motion dated 29th September 2025, brought under Articles 22, 40, and 60 of the Constitution, Section 24 of the Land Registration Act, and various provisions of the Civil Procedure Rules, the Plaintiff sought the following orders:
 - a. Spent
 - b. Spent
 - c. That this Hon. Court be pleased to issue an Order directed at the Land Registrar, Kajiado to issue and/or place a Land Restriction on L.R No. Kajiado/Kitengela/19745 prohibiting any transactions thereof until hearing and determination of the Application and the Suit herein.
 - d. That this Hon. Court be pleased to issue a Temporary Injunction restraining the Defendants/ Respondents by themselves, their agents and/or any other person acting in their name, and/or on their behalf from entering, trespassing, damaging, building erecting structures, cultivating, sub-dividing, alienating, selling, wasting, damaging or in any other manner dealing with the parcel of land known as L.R No. Kajiado/Kitengela/19745 pending the hearing and final determination of this suit.
 - e. That this Hon. Court be pleased to issue an Order directing the Officer Commanding Station (OCS) Oloosirkon Police Station, OCPD Isinya Police Division, the Kajiado County Police Commander and the Kajiado County Commissioner or their agents to ensure compliance with the orders issued herein.
 - f. That this Hon. Court be and is hereby pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
 - g. That the costs of this particular Application be provided for.
5. The application is supported by the affidavit of the Plaintiff, Enow Issak Liban, sworn on 29th September 2025. Therein, the Plaintiff contends that he is the registered owner of the suit land and in actual occupation. He alleges that his fundamental rights are being infringed and that there is an imminent danger of the suit land being wasted or sold to unsuspecting third parties by the 2nd Defendant if the orders sought are not granted.
6. The 2nd Defendant, Edward Njoroge, on his part approached this Court via a Notice of Motion dated 27th October 2025, seeking the following orders:
 - a. Spent
 - b. That in the interest of consistency of decisions and to avoid upstaging a judgment of a Court of concurrent jurisdiction, this Honourable Court be pleased to direct that the current proceedings be placed before the Honourable Justice L. Komingoi, being the judge who



handled and determined the related proceedings in ELC No. 64 of 2020: Esther N. Mainko (Suing for and on behalf of the Estate of Jeremiah Mainko Kidienye (Deceased) vs Edward Njoroge & 2 Others, involving the same parties and subject property.

- c. Spent.
 - d. That this Honourable Court be pleased to strike out the Notice of Motion Application dated 29th September 2025 as well as this entire suit.
 - e. That the costs of this Application and costs of the entire suit be borne by the Plaintiff and 1st Defendant.
7. The 2nd Defendant's application is supported by his affidavit sworn on 27th October 2025. The crux of his application is that the current suit is *res judicata*, the issues of which had been conclusively determined by this Court (Lady Justice Komingoi) in ELC No. 64 of 2020, where a judgment was delivered in his favour on 14th November 2024.
 8. The 2nd Defendant further deposes that the Plaintiff and 1st Defendant are engaging in forum shopping and abuse of court process. He avers that after failing to obtain favorable orders in ELC No. 64 of 2020, they moved to the Chief Magistrate's Court through Kajiado MCELC Case No. E039 of 2025, which was however dismissed on 1st October 2025. The 2nd Defendant contends that the filing of this instant suit, one day later, after the dismissal of Kajiado MCELC Case No. E039 of 2025 on 2nd October 2025, constitutes a deliberate attempt to re-litigate settled issues and obstruct the execution of a valid decree. He terms it as abuse of the judicial process.
 9. The 2nd Defendant, further, vehemently opposed the Plaintiff's application through a Replying Affidavit sworn on 27th October 2025. In his detailed deposition, the 2nd Defendant characterizes the Plaintiff's motion as a gross abuse of the court process, predicated on material non-disclosure and forum shopping. He specifically avers that the Plaintiff and the 1st Defendant are acting in collusion to circumvent a valid judgment of this Court in ELC Case No. 64 of 2020, delivered on 14th November 2024, which conclusively determined the ownership of the suit property, L.R. No. Kajiado/Kitengela/19745, in his favour.
 10. The 2nd Defendant reiterates that the Plaintiff had previously filed a substantially similar suit, Kajiado MCELC Case No. E039 of 2025, at the Chief Magistrate's Court. That suit was dismissed on 1st October 2025 by Hon. Jane Kamau on grounds of *res judicata*, want of jurisdiction, and bad faith ("unclean hands"). The Plaintiff filed the instant suit on 2nd October 2025, merely a day after the dismissal of the lower court suit, without disclosing these material facts to this Court in order to secure *ex-parte* orders. The 2nd Defendant maintains that he is the legal owner of the suit property by virtue of the judgement and decree in ELC No. 64 of 2020 and has already been issued with a Title Deed on 16th January 2025, effectively cancelling the previous entries in the register and the title held by the deceased's estate or the Plaintiff herein.
 11. Conversely, the 1st Defendant, Esther Nyambura Mainko, threw her weight behind the Plaintiff's application vide a Replying Affidavit sworn on 13th November 2025. Speaking as the Administrator of the Estate of Jeremiah Mainko Kidienye (Deceased), the 1st Defendant:
 - a. Confirms that the Deceased was the registered proprietor of the suit land.
 - b. Corroborates the Plaintiff's claim of purchasing the land and being in actual physical occupation.



- c. Accuses the 2nd Defendant of attempting to dispossess the Plaintiff through procedural technicalities rather than merit.
 - d. Asserts that the Plaintiff was not a party in ELC No. 64 of 2020 and therefore cannot be bound by its outcome without being heard.
12. In rejoinder to the 2nd Defendant's response to his application, the Plaintiff filed a Supplementary Affidavit sworn on 8th December 2025. He repeats that he is an innocent purchaser for value without notice of the previous litigation in ELC No. 64 of 2020. The allegations of fraud and "unclean hands" are baseless as he was merely exercising his right to access justice after the lower court declined jurisdiction.
13. The Plaintiff staunchly opposed the 2nd Defendant's motion to strike out the suit through a Replying Affidavit sworn on 8th December 2025. His opposition is anchored on the following grounds:
 - a. He argues that the doctrine of res judicata is inapplicable because he was neither a party nor a privy to ELC Case No. 64 of 2020. Consequently, he contends that the judgment therein cannot extinguish his independent proprietary rights.
 - b. He asserts that transferring the matter to Hon. Justice L. Komingoi or striking it out summarily would violate his constitutional right to a fair hearing under Article 50 of the *Constitution*, as his specific grievance regarding the sale agreement and occupation has never been adjudicated.
 - c. He avers that the dismissal of the lower court suit (MCELC E039 of 2025) was on technical jurisdictional grounds and not a determination on the merits of his ownership claim, thus permitting him to file the suit in the correct forum (the High Court/ELC).
14. The 1st Defendant also opposed the 2nd Defendant's application vide her Replying Affidavit sworn on 13th November 2025 contending that the 2nd Defendant's application is "replete with misrepresentations" designed to mislead the Court. The orders sought by the 2nd Defendant, particularly the suspension of the ex-parte orders, would unjustly expose the suit property to wastage and alienation, to the detriment of the Estate and the Plaintiff. The deponent urges the Court to prioritize the preservation of the subject matter over technical objections regarding the history of litigation.
15. To address these responses, the 2nd Defendant filed a Further Affidavit sworn on 15th December 2025. He reiterates and clarifies that the issue of ownership of L.R. No. Kajiado/Kitengela/19745 is settled (res judicata) and cannot be reopened by the "tactic" of introducing a new party (the Plaintiff) who claims through the losing party (the Estate). The Plaintiff's conduct, specifically moving from the Magistrate's Court to the ELC immediately after an adverse ruling, is the classical definition of abuse of process. The 1st Defendant's support of the Plaintiff demonstrates collusion in an attempt to undermine the judgement and decree in ELC No. 64 of 2020, where she was the Plaintiff and lost. He attached the Decree from ELC No. 64 of 2020 and the Ruling from MCELC Case No. E039 of 2025 as incontrovertible evidence that the Court's time is being wasted on re-litigation.

Directions

16. The court directed that the application be canvassed by way of written submissions. The parties complied and their submissions have been duly considered in the writing of this ruling.



Issues for determination

17. Having considered the pleadings in this matter, the two applications and the various responses as well as the submissions by the parties, the following issues present themselves for determination
 - i. Whether the Plaintiff has a right to institute a fresh suit in view of the judgement in Kajiado ELC 64 of 2020 in favour of the 2nd Defendant herein declaring him as the rightful owner of the suit property by adverse possession;
 - ii. Dependent on the outcome of (i) above, whether the Plaintiff's application has met the threshold for the grant of temporary injunction orders pending the hearing and determination of the suit; and
 - iii. What orders should issue in respect to costs.

Analysis and determination

A. Whether the Plaintiff has a right to institute a fresh suit in view of the judgement in Kajiado ELC 64 of 2020 in favour of the 2nd Defendant herein declaring him as the rightful owner of the suit property by adverse possession

18. The issue before the court is rather straight forward but complex at the same time. It is not in dispute that a judgment was already delivered in Kajiado ELC 64 of 2020 by my sister Judge, Lady Justice Komogoi, a Judge of concurrent jurisdiction with myself. In her judgment delivered on 14th November 2024, the Learned Judge entered judgment in favour of the 2nd Defendant herein against the 1st Defendant herein in the following terms;
 - i. That a declaration is hereby issued that the 1st Defendant (the 2nd Defendant in this case) is the rightful owner of land parcel No. Kjd/Kitengela/19745 and or is entitled to be registered as the owner of the said land parcel by adverse possession.
 - ii. That the Land Registrar, Kajiado is directed to cancel the title deed by the Plaintiff over the suit property that is Kjd/Kitengela/19745 within sixty (60) days from the date of this judgment.
 - iii. That an order is hereby issued, directing the Land Registrar, Kajiado to rectify the register by deleting the Plaintiff's name and issue the 1st Defendant with a certificate of title in respect of Kjd/Kitengela/19745 within 60 days of this judgment.
 - iv. The costs of the suit be borne by the Plaintiff.
19. It is necessary that the parties appreciate the nature of a claim for adverse possession; it is an action in rem against the land. The resulting judgment is therefore a judgment in rem.
20. The Court of Appeal in National Land Commission –vs- Registered Trustee of the Arya Pratinidhi Sabha, Eastern Africa & another (2019) eKLR, defined a judgment in rem as follows;

“An action in rem is one in which the judgment of the court determines the title to the property and the rights of the parties not merely as between themselves but also as against all the persons at any time dealing with them or with the property upon which the court has adjudicated”.



21. In *Kamunyu & others –vs- Attorney General & others* (2007) 1EA 116, the court had this to say about a judgment in rem;

“In a suit seeking a judgment in rem, that is a judgment applicable to the whole world, an individual does not sue on behalf of the whole world, but sues for judgment which is effective against the whole world.”
22. The *Evidence Act*, at Section 44 recognizes a judgment in rem as;

“A final judgment, order or decree of a competent court which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specific person but absolutely ...”.
23. As already noted earlier on, the Plaintiff insists on his right to be heard. In his plaint dated 29th September 2025, the Plaintiff describes himself as a bona fide innocent purchaser for value of the suit property, which he claims to have purchased from the estate of Jeremiah Mainko Kidiyeni – deceased, whose custodians/administrators were the 1st Defendant. The Plaintiff asserts that the suit property was at all material times vacant, unoccupied, uncultivated, untilled and otherwise uninhabited by anyone. That was the state in which he allegedly purchased it, and according to him, it has remained so even at the time of filing suit.
24. The Plaintiff further alleged that he engaged the vendors, the administrators of the estate of the late Jeremiah Mainko Kidiyeni, on or about 14th December 2018, when they mutually agreed to sell the suit property to him for Kshs. 10,000,000/- payable in instalments, as they initiated the succession process since it was registered in the name of the deceased. He allegedly made a down payment of Kshs.1,200,000/- and took possession of the suit property since then. The title was eventually transferred to him after the completion of the succession cause.
25. The Plaintiff alleges that it was only sometimes in November/December 2024, that he learnt that one of the administrators of the estate of the deceased was engaged in a court case with the 2nd Defendant herein and that a judgment had been entered declaring the 2nd Defendant as entitled to the suit property under the doctrine of adverse possession. The Plaintiff asserts that despite being in actual and physical occupation of the suit property, he was not notified, served, or otherwise joined as a party in the suit *Kajiado ELC 64 of 2020*. He accuses the 2nd Defendant of being in a hurry and unreasonable haste to get rid of the suit property by attempting to sell it to unsuspecting members of the public immediately after the judgment in his favour was entered in *Kajiado ELC 64 of 2020*, and despite the impugned judgment being the subject of an appeal in the Court of Appeal in Case No. E180 of 2025. The Plaintiff asserts that adverse possession cannot apply to land which the 2nd Defendant has never been in possession of.
26. In this suit, the Plaintiff is inviting the court to declare him an innocent bona fide purchaser for value of the suit property and the lawful owner thereof. He consequently seeks an order directing the Land Registrar to cancel the title deed by the 2nd Defendant and rectify the register accordingly. Put another way, the Plaintiff is inviting this court to overturn the judgement in *ELC 64 of 2020* that declared the 2nd Defendant the rightful owner of land parcel No. *Kjd/Kitengela/19745* by virtue of adverse possession.
27. The Plaintiff insinuates that adverse possession would not apply since the title had been transferred to him before the judgment and he was neither a party in the suit as a Defendant nor was he joined as an interested party.



28. The Court of Appeal addressing a similar argument in the case of Douglas Mbugua Mungai –vs- Harrison Munyi (2019) eKLR, had this to say,

“The issue in the Githu case was whether the mere change of ownership of land that is occupied by another under adverse possession would interrupt such person’s adverse possession. And the answer was correct that where the person in possession has already begun and is in the course of acquiring rights under Section 7 of the *Limitation of Actions act*, those rights are overriding interests by virtue Section 30(f) of the RLA, to which the new registered purchaser’s title will be subject.

Further, in Titus Kigoro Munyi –vs- Peter Mburu Kimani (2015) eKLR, this court observed that;

“It must be noted that under Section 7 of the *Limitation of Actions Act*, the law relating to prescription affects not only present holders of the title but their predecessors.”

29. The Plaintiff’s argument is therefore legally untenable. He is bound by the judgement in ELC 64 of 2020 as much as the 1st Defendant is.

30. In the case of Ngutari & 5 Others –vs- Okello & 5 others KECA 505 (KLR), the Court of Appeal was emphatic on the import of a judgment in rem. The court stated that;

“In rem proceedings give rise to in rem judgments which is a judgment of a court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing (as distinct from a particular interest in it of a party to the litigation). Such a judgment is said to be conclusive as against all the world in whatever it settles as to the status of a person or property or as to the right of title to the property and as to whatever disposition it makes of the property itself or of the proceeds of its sale. All persons regardless whether or not they are parties to any legal proceedings are bound by a judgment in rem and as such are estopped from averring that the status of persons or things, or the right or title to property is other than what the court has by its judgment declared or made it to be.”

31. From the foregoing, the judgment in ELC 64 of 2020, being a judgment in rem was conclusive as against the whole world in respect of the ownership of the suit property – L.R. No. KJD/Kitengela/19745. All persons, including the Plaintiff, are bound by the judgment and are estopped from averring that the right or title to the property is other than what the court has by its judgment declared it to be.

32. Therefore, the answer to the question whether the Plaintiff has a right to institute a fresh suit in view of the judgement in Kajiado ELC 64 of 2020 in favour of the 2nd Defendant herein declaring him as the rightful owner of the suit property by adverse possession, is a resounding, “NO”. The Plaintiff must rethink his litigation strategy. His suit as instituted is but an abuse of the process of court.

33. As the court noted in the case of Satya Bhama Gadhi –vs- DPP & 3 others (2018) eKLR,

“The concept of abuse of the court/judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. It is recognized that the abuse of process may lie in either proper or improper use of the judicial process in litigation. However, the employment of judicial process is only regarded generally as an abuse when a party



improperly uses the issue of the judicial process to the irritation and annoyance of his opponents.”

34. The court is not helpless when its process is abused. Sections 3 and 3A of the *Civil Procedure Act* vests in the court inherent powers to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of court.
35. In the case of Kenya Power and Lighting Company Limited –vs- Benzene Holdings Limited t/a Wyco Paints (2016) eKLR, the court citing the Halsbury’s Laws of England, 4th Edition, Vol. 37 Paragraph 14 discussed the extent of inherent powers as follows;-

“The jurisdiction of the court which is comprised within the term “inherent” is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process ... In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.” See also Meshallum Waweru Wanguku (supra).

This inherent jurisdiction is a residual intrinsic authority which the court may resort to in order to put right that which would otherwise be an injustice.”

36. The 2nd Defendant’s application succeeds. This court, exercising its inherent power under Sections 3 & 3A of the *Civil Procedure Act*, and in order to prevent abuse of its process strikes out the Plaintiff’s suit in its entirety as well as the Plaintiff’s application dated 29th September 2025 with costs to the 2nd Defendant.

B. Whether the Plaintiff’s application meets the threshold for the grant of interim injunction orders.

37. This issue was dependent on the outcome of the 1st issue which the court has already determined. The court having struck out the Plaintiff’s suit and the application dated 29th September 2025 will not spend time on this issue. It fails.

C. Costs

38. On the issue of costs, as the court has already pronounced itself, the Plaintiff’s suit in its entirety as well as the Plaintiff’s application dated 29th September 2025 are struck out with costs to the 2nd Defendant. The court too grants the costs of the application dated 27th October 2025 to the 2nd Defendant against the Plaintiff.



39. The final disposition is that the 2nd Defendant's application dated 29th September 2025 is allowed with costs to the 2nd Defendant against the Plaintiff. Consequently, the Plaintiff's suit and the application dated 29th September 2025 are struck out with costs to the 2nd Defendant against the Plaintiff.
40. For the avoidance of any doubts, the ex parte orders issued herein are vacated.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 27TH DAY OF JANUARY 2026.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ng'ang'a for the 2nd Defendant

Mr. Paul Macharia for the 1st Defendant

N/A by the Plaintiff

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

