

1. ***Spent.***
2. ***That pending the hearing and determination of this application, this honourable court do issue an order reinstating the plaintiffs back into the suit premises known as L.R 209/7784 situated on Kabarsiran avenue, Muthangari.***
3. ***That pending the hearing and determination of this application, this honourable court do issue an order of temporary injunction restraining the defendants, plus their agents, servants, petitioners, auctioneers, lawyers, brokers and/or anyone acting under them from entering, trespassing, demolishing, evicting, remaining, constructing, alienating, selling, transferring, dealing and or in any other way from interfering with the suit premises known as L.R 209/7784.***
4. ***That pending the hearing and determination of this application, this honourable court do issue an order of inhibition to prohibit any dealings or entries in the register and title in respect to the suit premises known as L.R 209/7784.***
5. ***That this honourable court be pleased to call for BPRT Cause No. 401 of 2024 between Mokowe traders limited and Taskeen Fatehidin & Mehnaz Fatehidin and give appropriate directions and orders in the interest of justice.***

6. That orders do issue in terms of prayer 2, 3, 4 & 5 pending the hearing and determination of the suit.

7. That the defendants be condemned to pay punitive costs.

2. The application is premised on the grounds *inter alia* that the 1st plaintiff/applicant and family have lived on the suit property for more than forty years. The application was further supported by the affidavit of the 1st plaintiff/applicant sworn on even date. She deposed that she has always resided on the suit property known as L.R. No. 209/7784 together with her late husband. She further deposed that on 24th May, 2024, she was ambushed by thugs and policemen brandishing a court order which did not bear her name or any of the people living on the suit property.
3. The 1st plaintiff/applicant further deposed that goods were stolen and together with her family and workers, they were kicked out of the suit property and rendered homeless. She deposed that the orders used to evict them was between Mokowe traders and Taskeen & Mehnaz Fatehidin, who have never been tenants on the suit property. Further, that after eviction and upon investigations, they learnt that the firm of Ahmednasir Abdullahi advocates entered into a consent with the advocates for the

alleged landlord who is the 3rd defendant/respondent. It was further deposed that the orders used to evict them emanate from a tribunal that deals with issues between the landlord and tenant in business whereas the suit property is residential. She deposed that the orders of eviction are irregular, and that the entire scenario is marred with fraud and concealment necessitating the need to be allowed back into the premises.

4. The 1st plaintiff/applicant deposed that if the 1st defendant/respondent had a legitimate claim over the suit property, she would not have permitted them to stay in the suit property for over forty years, and neither would they have created a fake tenancy with the third parties to evict her.
5. The application was further supported by the affidavit of Fizan Ashraf, the son of the 1st plaintiff/applicant sworn on even date. Fizan Ashraf raised similar averments as those raised by the 1st plaintiff/applicant and more particularly to the incident that took place on 24th May, 2024 that led to their eviction from the suit property.
6. The 1st defendant/respondent opposed the application through her replying affidavit sworn on 21st July, 2025 for and on behalf of the 2nd and 4th defendants/respondents. The 1st defendant/respondent

denied the claim for adverse possession on the grounds that it does not meet the threshold provided under **Section 7 and 13(1)** of the **Limitation of Actions Act**. He further deposed that the plaintiffs/applicants have failed to provide sufficient evidence to demonstrate intention to possess the suit property as this is not the first time that they are filing an application of similar nature.

7. The 1st defendant/respondent deposed that her late father and the late husband of the 1st plaintiff/ applicant purchased adjacent properties being the suit property and LR. No. 209/7783 which is owned by the plaintiffs/applicants, and for this reason, they have not been rendered homeless as they claim. Further, that during his father's lifetime, he transferred the suit property to the 2nd defendant/ respondent and later sold the same to the 3rd defendant/respondent when his health deteriorated. It was deposed that they have been in possession of the suit property, and the eviction undertaken by the 3rd defendant/respondent was pursuant to a court order and that it was enforced in the presence of policemen.

8. She deposed that the plaintiffs/applicants have not demonstrated prima facie case to warrant the grant of injunction sought as no clear right to the suit property has been established. Further, that

prayer no. 2 is not a preservative order but a dispositive one as it seeks to alter the status quo of the parties by removing the defendants/respondents from the premises. The 1st defendant/respondent deposed that given that it is the 2nd defendant/respondent company that sold the suit property, there is no privity of contract between the deceased 1st plaintiff to seek orders restraining her and the beneficiaries whatsoever. Further, the plaintiffs/applicants have not demonstrated that they will suffer irreparable harm that cannot be remedied through monetary compensation or other legal remedies.

9. In response thereto, the 2nd plaintiff/applicant filed his supplementary affidavit sworn on 29th September, 2025. He deposed that the replying affidavit is defective and ought to be struck out from the record. The 2nd plaintiff/applicant deposed that it is clear that the defendants/respondents may alter the suit property if not stopped by an order of this court. Further, that if there was any sale as alleged, the same remains illegal, null and void.

10. The 2nd plaintiff/applicant further deposed that this court has inherent powers to call for the file and make appropriate orders quashing the proceedings before the business premises rent

tribunal. That from the anomalies with respect to the proceedings before the tribunal, the defendants/respondents used the said tribunal to unlawfully achieve an end.

- 11.** The application was canvassed through written submissions. The plaintiffs/applicants filed their written submissions dated 30th September, 2025. The 1st, 2nd and 4th defendants/respondents filed their written submissions dated 6th November, 2025.
- 12.** The 3rd defendant/respondent did not file its response to the application and neither did it file its written submissions. Be that as it may, I have carefully considered the application, the replies thereof and the written submissions by the respective parties. The issue for determination is *whether the plaintiffs/applicants have established a prima facie case to warrant the orders of temporary injunction.*
- 13.** At the centre of this dispute is the ownership and possession of the suit property which the plaintiffs/applicants claim they have lived for forty years and which was owned by the 1st plaintiff's/applicant's deceased husband. On the other hand, the 1st, 2nd and 4th defendants/respondents contend that the suit property was owned by the 1st defendant/respondent's late father

who sold the same to the 2nd defendant/respondent and later the 3rd defendant/respondent.

14. Secondly, the plaintiffs/applicants contest their eviction from the suit property which they argued was illegal and unlawful having arisen from proceedings before the business premises rent tribunal which was marred with fraud and concealment of facts. Both the plaintiffs/applicants and the 1st defendant/respondents supported their arguments with relevant documents.

15. Before I proceed further, I need to point out that the jurisdiction exercised by this court over matters emanating from the business premises rent tribunal is appellate based on the facts so far presented in this case. It has not been shown through any known legal provision that this court can call for a file at the said tribunal. It is unheard of that this court can call for a file that is before the tribunal to correct any anomalies whatsoever besides through an appellate process. For this reason, prayer 5 cannot be issued as this court cannot interfere with the process bestowed upon another body mandated to deal with issues that are before it for purposes of giving directions as prayed.

16. The prerequisite conditions for a grant of injunctive orders under **Order 40 Rule 1(a)** of the **Civil Procedure Rules** were

determined in the celebrated case of **Giella v Cassman Brown & Co Ltd [1973] 1 EA 358** as follows:-

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. 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. (E.A. Industries v. Trufoods, [1972] E.A. 420.)”

17. In **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR** the Court of Appeal defined a prima facie case in the following terms:-

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It 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.”

18. On whether the plaintiffs/applicants have established a prima facie case, it was submitted by the plaintiffs/applicants that they

were not parties to the proceedings before the business premises rent tribunal, that the tribunal lacked jurisdiction and their eviction was unlawful. My attention was drawn to the documents supporting the claim of ownership. Save for the agreement of sale dated 10th May, 1995, there is no other proof of ownership. The 1st defendant/respondent on the other hand annexed a copy of the certificate of title registered in the name of Mohamed Anwar. The respective parties went into detail to argue their respective cases, which in my view, are issues which are meant to be dealt with during the hearing.

19. I am persuaded to adopt the holding in the case of **Mbuthia v Jimba Credit Corporation Ltd 1988 KLR1** where the court pronounced itself as follows:-

“In an application for interlocutory injunctions, the court is not required to make final findings of contested fact and law and the court should only weigh the relative strength of the parties’ cases.”

20. In my view, the plaintiffs/applicants went into great detail to demonstrate the incident that took place on 24th May, 2024 and while I empathize with the eviction whether lawful or unlawful, I am not satisfied that this is a demonstration of a prima facie case.

21. The Court of Appeal in the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others** [2014] eKLR opined as follows:-

“...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”

22. Seeing that the plaintiffs/applicants did not surmount the first hurdle of proving a prima facie case for the grant of the interlocutory relief sought, it is not worthwhile to consider the other two limbs as the Court of Appeal aptly observed in **Nguruman Limited** (supra). A conclusive determination of the

entire claims by the parties herein can only be determined at the full hearing of the case.

- 23.** From the above, I find no merit in the notice of motion dated 27th June, 2025 and the same is hereby dismissed. Costs shall be in the cause.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 18TH DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
18/02/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

Ms. Asli for the 1st, 2nd and 4th Defendants/Respondents

Ms. Sheila Mugo for the Plaintiff/Applicant