

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLC NO. E285 OF 2025

DR. ABDULWAHID ASGARALI KASMANI
(SUING AS LAWFUL ATTORNEY AND AGENT
OF ASGARALI ABDULSHAKUR
KASMANI.....PLAINTIFF/APPLICANT

-VERSUS-

ABDULSHAKUR
ASGARALI

KASMANI.....1ST

DEFENDANT/RESPONDENT

THE CHIEF LAND

REGISTRAR.....2ND

DEFENDANT/RESPONDENT

THE HON. ATTORNEY

GENERAL.....3RD

DEFENDANT/RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated 10th June, 2025 and the notice of preliminary objection dated 18th August, 2025 respectively. The notice of motion dated 10th June, 2025 is filed by the plaintiff/applicant and it is expressed to be brought under **Order 40 Rules 1, 2, 3, 4 and 10** and **Order 51 Rule 1** of the **Civil Procedure Rules** and **Sections 1A, 1B and 3A** of the **Civil Procedure Act** seeking the following orders:-

1. Spent.

2. Spent.

3. That pending the hearing and determination of this suit, a temporary injunction be and is hereby issued restraining the 1st defendant, by himself, his agents, servants, or any person acting under his authority, from selling, charging, leasing, wasting, alienating, transferring, or in any other manner whatsoever dealing with the family residence, known as the parklands property, being LR 1870/1/347 measuring 0.1962 HA held jointly in trust by the 1st Defendant and his son, Uwais Abdulshakur Kasmani, for the Principal.

4. Spent.

5. That pending the hearing and determination of this suit, a temporary injunction be and is hereby issued restraining the 1st defendant, by himself, his agents, servants, or and person acting under his authority, from selling, charging, leasing, wasting, alienating, transferring, or in any other manner whatsoever sealing with all other properties listed in the plaint, and held in trust by the 1st defendant for the principal.

6. That pending the hearing and determination of this suit, an order be and is hereby issued compelling the 1st defendant to render a full and comprehensive account of all family properties held in trust for the principal, from the inception of the trust to date.

7. That pending the hearing and determination of this suit, an order be and is hereby issued compelling the 1st defendant to forthwith surrender all

documents relating to the family assets, including title deeds, transaction correspondences, and official government certificates, to the principal through his attorney, the plaintiff.

8. That pending the hearing and determination of this suit, an order be and is hereby issued restoring and ensuring the principal's and other family members' unrestricted access and enjoyment of the family home in parklands, being LR No.870/1/347 measuring 0.1962 HA.

9. That the Officer Commanding Police Station parklands police station be and is hereby directed to ensure enforcement and compliance with orders 8 herein.

10. That the costs of this application be provided for.

2. The application is premised on the grounds *inter alia* that the principal Asgarali Abdulshakur Kasmani entrusted substantial family capital and assets to the 1st defendant/respondent to be held in a verbal trust for the benefit of the entire family under Islamic law given the 1st defendant/ respondent's position as the eldest son. The application is supported by the affidavit of the plaintiff/applicant which was sworn on even date.

3. The plaintiff/applicant deposed that the principal, his father, is a male adult of sound mind and has been a highly successful

businessman since 1970, and that he has invested extensively in watches, watch repair tools, and real estate, not only in Kenya but also accumulated substantial savings of UK Pounds 1,000,000/- in Habib Bank Ltd in the United Kingdom.

4. He deposed that sometime in the early 2000s, the principal decided to strategically invest the family's substantial capital and other assets, and these investments were to be held either jointly or, for administrative convenience and trust, in the name of one of his sons, primarily the 1st defendant/respondent. He deposed that the explicit understanding and verbal agreement, which is legally recognized under Islamic law was that the 1st defendant/respondent would hold and manage these assets strictly in trust for the benefit of the entire family, both current and future generations.
5. It was further deposed that the principal personally purchased numerous valuable properties in prime locations in Kenya, including Parklands, Lavington, General Mathenge, Gigiri, Hurlingham, and Riverside, and that these properties were acquired with the principal's sole funds and registered predominantly in the 1st defendant/respondent's name who was acting as trustee, including the family home in parklands, being LR 1870/1/347 measuring 0.1962 HA. To further facilitate these

family development projects, the principal sold all his other personal assets, including his houses in Pangani and South C, pouring the entirety of his personal wealth into the family's investment portfolio. The proceeds for these development projects were directly transferred from the principal's accounts to the 1st defendant's/respondent's account.

6. The plaintiff/applicant further deposed that beyond the aforesaid Kenyan properties, the 1st defendant/respondent, acting on the principal's consent and with family capital, he also acquired significant assets in Dubai, U.A.E, which along with other shares, were predominantly registered under the 1st defendant/respondent as the trustee.
7. The plaintiff/applicant deposed that the 1st defendant/respondent unilaterally without the consent of the principal or the family, repudiated the trust arrangement and has purported to claim absolute ownership of the trust property, threatening to disinherit the principal, their mother, their sister, himself, and their respective children, and that this breach of trust is a direct violation of the foundational agreement and Islamic principles.
8. Further, that the 1st defendant/respondent has gone to the extent of threatening to physically evict the principal and other family

members from the parklands property, which is the long-standing family home, and that he has also physically restricted access to the family home by locking almost all rooms, leaving the plaintiff/applicant's family with only two rooms, and treating the principal, their patriarch, like a stranger in his own house.

9. The plaintiff/applicant deposed that the 1st defendant/respondent actions amount to coercion and unconscionable conduct as he forced the principal into accepting a fixed deposit amount of Kshs.78,000,000/- as a purported final settlement. This amount being already the principal's own money, and the "deed of settlement" dated 29th July, 2024 which formalizes this, was executed by the principal under duress and without genuine consent to its terms as a comprehensive resolution of the vast trust estate.
10. That in any event, the principal lacked legal capacity to execute the "deed of settlement" having appointed the plaintiff/applicant as his lawful attorney vide the power of attorney dated 4th August, 2022 thereby rendering the said deed of settlement null and void. The plaintiff/applicant deposed that the 1st defendant/respondent has unlawfully seized and retained critical family documents, including title deeds, cheque books, and transaction correspondences, making it extremely challenging for the

principal to fully ascertain and protect his interests in the trust property.

- 11.** He is apprehensive that if the interim orders sought are not granted, the principal and his family will suffer irreparable harm that cannot be adequately compensated by damages. Further, that the immediate threat of eviction from the family home, the potential for the 1st defendant/respondent to sell, charge, or further dissipate the properties and assets held in trust, would render any final judgment of this court nugatory.
- 12.** The 1st defendant/respondent filed the replying affidavit sworn on 16th July, 2025 in response to the application. He deposed that while it is true that their father had accumulated substantial savings in Habib Bank in the United Kingdom, and that he had added the plaintiff/applicant and him as signatories to the said account, he (the principal) did not however in any way specify the extent of the respective co-signatory's shareholding to the said account, of their father's estate as alleged or at all.
- 13.** Thus, the 1st defendant/respondent's position is that it is not true as alleged or at all that the family's substantial capital and other assets were for administrative convenience vested in him, in trust for the family as alleged or at all, as he was only advanced

200,000/= british pounds by his father as capital for his real estate business. The 1st defendant/respondent deposed that he is aware that from the capital referred to being the funds in Habib Bank, United Kingdom, the said funds were spent by their father on gold and jewelry valued at approximately Kshs.30,000,000/- on lavish family weddings and also into the watch business.

14. The 1st defendant/respondent denied that various prime properties in Parklands, Lavington, General Mathenge, Gigiri, Hurlingham, and Riverside were acquired with their father's funds and registered in his name in trust for the family. He deposed that he acquired the said properties from funds generated from his own businesses and monies borrowed from banks and other financiers. While he acknowledged that it is true that their father purchased the parklands property, he deposed that it was a gift to his first grand-son Uwais Abdulshakur Kasmani, who is also the 1st defendant's first-born son, and that given that he was then a minor, this property was registered in his name to hold in trust. He deposed that after the aforesaid property had been purchased, he redeveloped the parklands property at the cost of Kshs.35,000,000/- by converting the 3-bedroom bungalow that sat there into the 13-bedroom mansion that stands on the said property today. He deposed that he expended these funds from

his business under the knowledge and belief that their father had genuinely gifted this property to his son.

15. The 1st defendant/respondent denied that that their father (principal) sold all his other personal assets including houses in Pangani and South C, pouring the entirety of his personal wealth into the family's investment portfolio. He deposed that their father still retains a property in Pangani, being L.R. No. 209/1659, which houses 30 residential units from which the plaintiff/applicant and their father collect rental income of approximately Kshs.800,000/-, a fact which the plaintiff/applicant has concealed from the court.

16. Further, the 1st defendant/respondent denied that the properties he has acquired in UAE Dubai, and particularly the Downtown Views IIT1/1708, Vida Dubai Mall Tower 1/3807 and Beach Vista Tower 1/806 were purchased with their father's consent and registered in his name. He deposed that he purchased them with his own funds. In response to the allegations of breach of trust, the 1st defendant/respondent deposed that it is not clear how he has repudiated the trust arrangement as alleged and denied that he has threatened to evict their father from the parklands property. He also denied locking almost all rooms in the said house as alleged by the plaintiff/ applicant. He deposed that he resided in the parklands property with his wife and three children

during the material time, in the rooms which the plaintiff/applicant alleges that he has locked, which hold his family's personal belongings. Further, that he now resides outside his son's house, and has been forced to rent property.

- 17.** The 1st defendant/respondent accused the plaintiff/applicant that despite his successful medical career, he is hell bent on continuing to stay in the parklands property, motivated by the fact that all his living expenses are paid for, yet he has a budding Neurosurgery career initially in Eldoret, and currently both in Nairobi and Eldoret and is not financially disadvantaged as he has led their father to believe.
- 18.** In response to paragraph 18 of the plaintiff/applicant's affidavit, that their father lacked the legal capacity to execute the deed of settlement on account having appointed the plaintiff/applicant as his lawful agent, he deposed that the said power of attorney as drafted does not divest its donor of his capacity to act on his own behalf.
- 19.** The 1st defendant/respondent filed the notice of preliminary objection dated 18th August, 2025 opposing the suit on the following grounds:-

- 1. This honourable court lacks the jurisdiction to determine issues relating to the use, occupation of and title in respect to of the properties particularized in paragraph 13 of the Plaint, to wit Downtown Views II T1/1708 Dubai - U.A.E; Vida Dubai Mall Tower 11/3807 Dubai – U.A.E; and Beach Vista Tower 11/806 Dubai – U.A.E and to issue the reliefs sought in respect of the said properties set out in paragraph (f) in the prayers of the plaint, on account of them being properties situated in the United Arab Emirates.**
- 2. The plaintiff's suit for a declaration that a resulting trust has arisen in relation to L.R No. 1870/1/347 (hereinafter "the Parklands Property") which is registered in the 1st defendant's name as a trustee of Uwais Abdul Shakur Kasmani is redundant and moot, in view of the express trust appearing on the face of the title to the parklands property created in favour of Uwais Abdul Shakur Kasmani by Asgarali Abdulshakur Kasmani.**
- 3. Further, and in any event, the gift of parklands property by Asgarali Abdulshakur Kasmani to Uwais Abdul Shakur Kasmani once completed is in law irreversible by himself and/or appointed attorney/agent.**
- 4. The suit as filed is fatally defective.**

20. Both the application and the preliminary objection were canvassed through written submissions. The plaintiff/applicant

filed his written submissions dated 10th November, 2025. The 1st defendant/respondent filed his written submissions dated 18th November, 2025.

21. Before determining the instant application, the court must first determine the preliminary objection filed by the 1st defendant/respondent, as it may as well dispose of the entire suit. A preliminary objection was described in the famous **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696** case to mean:-

Per Law, JA

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

22. The first ground is that this court lacks the jurisdiction to determine issues relating to the use, occupation of and title in respect to the properties particularized in paragraph 13 of the plaint, to wit Downtown Views II T1/1708 Dubai - U.A.E; Vida

Dubai Mall Tower 11/3807 Dubai — U.A.E; and Beach Vista Tower 11/806 Dubai — U.A.E.

- 23.** It is certainly true that the aforesaid properties are not within the territorial jurisdiction of this court. However, the mentioned properties in Dubai U.A.E are not the only suit properties, there are many other properties that form the subject of this suit that are within the jurisdiction of this court. Therefore, this ground cannot dispose of the suit, and it fails to meet the test of a preliminary objection as defined in the **Mukhisa Biscuit case** (Supra).
- 24.** The second point is that L.R No. 1870/1/347 (hereinafter “the parklands property”) which is registered in the name of the 1st defendant/respondent as a trustee of Uwais Abdul Shakur Kasmani is redundant and moot, since the trust is already registered on the face of the title. From the copy of the said title annexed to the application, it does show that the same is in the 1st defendant/respondent’s name held as trustee of Uwais Abdul Shakur Kasmani. However, several trusts can be held by the same title, some of them unregistered. There are also other issues arising from the plaint, not just the issue of trust in this particular title. Thus, this ground also fails and it cannot dispose of the suit.

25. Ground three of the objection is that the gift of the parklands property by Asgarali Abdulshakur Kasmani to Uwais Abdul Shakur Kasmani once completed is in law irreversible by himself and/or appointed attorney/agent. This is a contested issue by the plaintiff/applicant which will require the court to make a determination on matters of whether it was a gift or not. This goes against the true nature of a preliminary objection as was held by Sir Charles Newbold P. who clarified that:-

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

26. The fourth ground is that the suit is fatally defective, which is an ambiguous point as the 1st defendant/ respondent has not brought forth a point to establish any fatality in the instant suit. Thus, the preliminary objection dated 18th August, 2025 fails the test of a true preliminary objection and it is dismissed.

27. Moving on to the instant application dated 10th June, 2025 the plaintiff/applicant seeks, among other orders, an order of injunction against the defendants/respondents, restraining them from interfering with the suit property. **Order 40 Rule 1(a)** of the **Civil Procedure Rules** encompasses the provision for temporary injunctions and provides 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.”

28. 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.”

29. Therefore, the first criteria for a grant of an injunction is that one must be able to show that they have prima facie case with a probability of success. In the case of **Vivo Energy Kenya Limited v Maloba Petrol Station Limited & 3 others [2015] eKLR**, the Court of Appeal detailed what probability of success means when it quoted itself thus:-

“In AGIP (K) LTD V. VORA [2000] 2 EA 285, at page 291, while reversing a grant of an order of injunction by the High Court, this Court stated:

“With reference to ground 19 of the appeal, it is as well to remember that the Commissioner had before him an application, which by law required him to consider whether on all the facts in support or in opposition, a prima facie case with a probability of success had been made out to justify the grant of an injunction. In our view, the Commissioner was not entitled to delve into substantive issues and make finally

concluded views of the dispute. He was not at that interlocutory stage of the matter, to condemn one of the parties before hearing oral evidence that party being condemned had in opposition to the claims in the suit.” (Emphasis added).”

30. We are at the interlocutory stage and the parties cannot yet fully prove their claims until the matter is heard and determined. To succeed in an application for injunction, one must be able to show a prima facie right that needs to be protected. The Court of Appeal in the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR** 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."

31. In this instance, the title to LR 1870/1/347 which an injunction is sought against, as annexed to the plaintiff/applicant's affidavit is in the name of the 1st defendant/respondent who is registered as the trustee of Uwais Abdul Shakur Kasmani, who is also his son. The plaintiff/applicant is yet to prove their claim of a trust being created over the said property on behalf of the entire family and is yet to prove their legal right. The court must balance the rights of the 1st defendant/respondent as the registered trustee for his son with the need to preserve the subject matter of the suit pending hearing and determination of the same.

32. Having said this, an order of status quo would be in the best interest of justice, since it would preserve this particular property as it is pending the hearing and determination of the suit, while

not depriving any of the 1st defendant/respondent's rights. In my view, this is where the balance of convenience lies.

33. In Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] eKLR it was held as follows:-

“Status quo” in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events.”

34. It was observed by the court in Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others [2015] eKLR that a status quo order must be specific and clear to the parties. The court stated as follows:

“Status quo” in this respect, as maintained by an injunctive or conservatory or stay order, is the then existing state of affairs. Often the order is very specific and descriptive in such instances and parties are expected, nay bound, to observe the order. The order will often be issued after a balance of all the factors and circumstances. As was stated by Lord Diplock in American Cyanid Co.-v- Ethicon [1975] 1 All ER 504 at 511 “where factors appear to be evenly balanced, it is a counsel of prudence to take such measures as are calculated to preserve the status quo. . . It is undesirable to simply make an order of status quo to be maintained

without clearly describing the state of affairs then existing and being preserved. Assistance of the counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.”

35. The other prayers sought by the plaintiff/applicant is for the 1st defendant/respondent to render a full and comprehensive account of all family properties held in trust for the principal, from the inception of the trust to date, and that he also be compelled to surrender all documents relating to the family assets, including title deeds, transaction correspondences, and official government certificates, to the principal through his attorney, the plaintiff and restore unrestricted access of the family home.
36. The issue of whether the 1st defendant/respondent holds the property in parklands and other properties in trust for the family, is a matter yet to be determined as the court has stated above. The court cannot therefore assume trust and order the 1st defendant/ respondent to surrender documents in his own name and render account of the same at this stage. The existence of a customary trust as claimed by the plaintiff/applicant to be under Islamic law must be proven. Okong’o J (as he then was) in the case of **Richard Nyamemba Auka & 2 Others Vs Josephine M otarohi & 2 Others [2014] KEELC 11 (KLR)** held:-

“The existence or not of a customary trust is a matter of fact. The alleged trust must be pleaded particularized and proved”

37. In the case of **Cosmas Cherono & 2 others v Veronica Cherono**
o [2021] eKLR the court cited with approval as follows:-

“In Juletabi African Adventure Limited & Another v Christopher Michael Lockley [2017] eKLR, the Court also held that ... It is settled that the onus lies on a party relying on the existence of a trust to prove it through evidence. That is because: -The law never implies, the Court never presumes, a trust, but in case of absolute necessity. The Courts will not imply a trust save in order to give effect to the intentions of the parties. The intention of the parties to create a trust must be clearly determined before a trust will be implied.”

That in the instant case, the import of the foregoing precedents is that it is upon the plaintiffs to lead evidence proving that indeed a constructive trust existed. It was incumbent on the plaintiffs to demonstrate that the suit property was ancestral land, and that it was vested in Joseph Rutto Cherono to hold for the family. Importantly, the court is not obligated to imply the existence of a trust outside the express and clear intention of the parties.”

38. From the above, it is my finding that the notice of motion dated 10th June 2025 lacks merit and it is hereby dismissed. The notice of preliminary objection dated 18th August, 2025 is also dismissed. The court consequently makes an order that status quo be maintained pending the hearing and determination of this suit.

39. For the avoidance of doubt, an order of status quo in this case would be for the 1st defendant/respondent not to make any further transactions on LR 1870/1/347, such as sub-division or alienation of the same, and to preserve it pending the full hearing and determination of the matter. I make no orders as to costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 25TH DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
25/02/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Andrew Wandabwa for the 1st Defendant

*Mr. Steve Ogolla appearing together with Ms. Agasha for the
Plaintiff*