

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
BUNGOMA

ELC CASE NO. E008 OF 2025 (OS)

**JOSEPHAT WANGILA SAWA &
JOHANSON WAFULA MASASABI
(Suing as the Legal Representatives of the
Estate of JOINA NABANGA MASASABI)**
APPLICANTS

VERSUS

EMMANUEL NYONGESA
RESPONDENT

RULING

Through the application dated 18/11/2025, the Applicants sought a temporary injunction to restrain the Respondent or his agents from interfering with, subdividing, alienating, disposing of or transferring the land known as Kimilili/Kimilili/2865 pending hearing and determination of the application *inter partes*. They also sought cancellation of the title over Kimilili/Kimilili/2865 and the subdivisions resulting from Kimilili/Kimilili/561 and for the status of the land to revert to what it was at the time of filing suit as Kimilili/Kimilili/561 due to violation of the court order issued on 31/7/2025.

The other prayers sought by the Applicants are to have the court cite the Respondent for contempt of the orders which were issued

by the court on 31/7/2025 in the presence of his advocate and for the Respondent to be punished for contempt of the court by imprisonment for a term to be determined by this court or payment of a fine for disobedience of the court order. The Applicants prayed for the injunctive orders issued on 31/7/2025 to be extended until the suit is heard and determined.

The application was made on the grounds that the Applicants learned that the Respondent subdivided Kimilili/Kimilili/561 to create new numbers including Kimilili/Kimilili/2865 against the orders of injunction with the aim of rendering this suit an academic exercise. That the court issued a temporary injunction with respect to Kimilili/Kimilili/561 and that the Respondent mentioned in his replying affidavit dated 27/8/2025 that Kimilili/Kimilili/561 was subdivided and new numbers were issued.

Both Applicants swore affidavits in support of the application, which contain similar facts. They relied on the Respondent's affidavit disclosing the fact that the suit land had been subdivided to create Kimilili/Kimilili/2865 and stated that when they filed suit, the land was registered as Kimilili/Kimilili/561.

The Respondent swore the affidavit in opposition to that application and denied violating any court orders. He urged that when the court made the orders restricting dealings with the suit land on 31/7/2025, he had already subdivided parcel no. 561 and been issued the title over parcel no. 8865 on 1/7/2025. He attached a copy of the title over parcel no. 8865 and clarified that

he was registered as proprietor of that land on 16/5/2025. He maintained that he was not in contempt of any court orders.

The court directed parties to file an exchange written submission on the application, which it has read and considered. The Applicants submitted that during the pendency of this suit and after the application for injunction was allowed, the Respondent caused the subdivision of the suit land and issuance of new numbers contrary to the court order. They urged that the Respondent's action of failing to comply with the court orders issued on 31/7/2025 did not only bring the authority of the court into disrepute, but was also tantamount to impunity, which should not go unpunished. The Applicants contended that they would suffer undue prejudice, loss or hardship if the land which forms part of their mother's estate is subdivided and the Respondent sells it to third parties. They pointed out that when they filed suit in April, 2025, the suit land was Kimilili/Kimilili/561 and that the Respondent did not attach any title deed in his name when the matter came up for hearing, mention and ruling. That the only available document showed that the suit land was registered in the name of the late Joina Nabangala Masasabi, and on the basis of this fact, the court issued an injunction restricting dealings with parcel no. 561.

The Respondent submitted that when the Applicants filed the application dated 8/4/2025, no injunctive orders were issued and that these were granted on 31/7/2025. He clarified that Kimilili/Kimilili/2865 did not exist as a result of the sub-division of

Kimilili/Kimilili/561 as the Applicants contended. He added that only parcel No. 8865 registered in his name resulted from the subdivision of parcel no. 561. He maintained that his title was issued before the court granted the orders of injunction. He elaborated that the subdivision and transfer process began on 31/7/2024. The Respondent cited Section 5 of the Judicature Act on the power of the court to punish for contempt of court. He maintained that he was not in contempt as the Applicants contended and urged the court to dismiss the application.

The issue for determination is whether this court should issue an injunction restraining dealings with Kimilili/Kimilili/2865 and whether this parcel of land should revert to parcel no. 561. Lastly, the court is called upon to make a determination as to whether the Respondent should be cited for contempt of the court with respect to the orders it issued on 31/7/2026.

From the copy of the title that the Respondent annexed to his replying affidavit, the certificate of title over Kimilili/Kimilili/8865 was issued to the Respondent on 1/7/2025 and the register was opened on 10/3/2025. This was before the court issued the injunctive orders on 31/7/2025. By the time the court made the orders on 31/07/2025, Kimilili/Kimilili/561 had already been subdivided and Kimilili/Kimilili/8865 hived out of this land. The Respondent was not in contempt of the court orders.

The court notes that the Applicants referred to parcel number 2865 in their application and not 8865, which belongs to the Respondent. To preserve the substratum of the suit, the

Respondent is directed to maintain the status quo subsisting on Kimilili/Kimilili/8865 pending hearing and determination of the suit. Parties are directed to expedite the hearing and disposal of this suit.

The costs of the application will be in the cause.

Delivered virtually at Bungoma this 17th day of February 2026.

**K. BOR
JUDGE**

In the presence of: -

Mr. Lazarus Nabibia for the Applicants

No appearance for the Respondent