

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAKURU**  
**ELC NO E090 OF 2025**

SARAH  
KAMAU.....PLAINTIFF/APPLICANT

WAIRIMU

VERSUS

FRANCIS KAMAU KARIUKI.....1<sup>ST</sup> DEFENDANT/RESPONDENT  
STEPHEN NGUNJIRI MAINA.....2<sup>ND</sup> DEFENDANT/RESPONDENT  
SIMON NDUNGU KIBARI.....3<sup>RD</sup> DEFENDANT/RESPONDENT

**RULING**

1. This ruling is in respect of the application dated 23<sup>rd</sup> July, 2025, by the Plaintiff/  
Applicant seeking the following orders:

a) *Spent.*

b) *Spent.*

c) *THAT pending the hearing and final determination of this suit, this Honourable Court be pleased to issue interim injunctive orders restraining the Defendant/Respondents, whether by himself, his agents, servants and/or any person acting under his authority from trespassing upon, entering, remaining on, constructing upon, disposing of, charging or in any other manner whatsoever interfering with all that parcel of land known as MAU SUMMIT BLOCK 5/149 in order to safeguard the subject property and preserve the status quo.*

d) *THAT the costs of this application be borne by the Defendant/Respondent.*

2. The application is grounded on the supporting affidavit of Sarah Wairimu Kamau, the Applicant who deponed that she is the legal and beneficial owner of a parcel of land known as MAU SUMMIT BLOCK 5/149 measuring approximately 6 acres which she acquired through Succession from her late husband Edward Kamau Kariuki.
3. She deponed that prior to her husband's death, they had disposed of 2 acres to cater for his medical expenses. It was her disposition that the title to the property had not been processed, and due to her old age, she engaged a surveyor, the 2<sup>nd</sup> Defendant to assist in the process. Further, she stated that she decided to sell another ½ acre of the suit parcel to the 1<sup>st</sup> Defendant and engaged the services of the 2<sup>nd</sup> Defendant to facilitate the same. That later when she visited the Surveyor to collect the title, she found that the remaining portion of 3 ½ acres, had been registered in the 1<sup>st</sup> Defendant's name.
4. Additionally, the Applicant stated that the 1<sup>st</sup> Defendant coerced her into signing an agreement that she had sold the 3 ½ acres to him and she reported the matter to the Chief and DCI who are investigating the matter.

### **2<sup>ND</sup> RESPONDENT'S RESPONSE**

5. The 2<sup>nd</sup> Respondent, Stephen Ngunjiri Maina, filed his replying affidavit sworn on 3<sup>rd</sup> October, 2025, where he deponed that the suit property MAU SUMMIT BLOCK 5/149 did not exist and therefore the court cannot issue orders in a vacuum.
6. He averred that the Applicant had engaged him to subdivide her two parcels of land MAU SUMMIT MOLO BLOCK 5/149 (MOTO) and MAU SUMMIT

MOLO BLOCK 5/188 (MOTO), and that the Applicant sold the second parcel of land to the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

7. He further deponed that in an attempt to have the matter settled, the Applicant swore an affidavit stating that she had accepted the parcel of land known as MAU SUMMIT/MOLO BLOCK 7/325 (TAYARI), and that the Applicant was not coerced into selling her suit property. He urged the court to dismiss the application with costs.
8. The Applicant filed a supplementary affidavit and deponed that the fraudulent actions by the 1<sup>st</sup> Defendant culminated in the suit land being registered in his name, as she had engaged the 2<sup>nd</sup> Defendant to only sell ½ acre of land parcel MAU SUMMIT/MOLO BLOCK 5/149, but she discovered the fraud in 2020 and thus denied that allegation that the suit was statute barred.
9. It was the Applicant's disposition that it is not true that she swore an affidavit withdrawing her case at the DCI and agreed to take parcel of land known as MAU SUMMIT/MOLO BLOCK 7/325 (TAYARI) as compensation. She also stated that she has never taken possession, occupation, control or ownership of the said parcel of land.

#### **APPLICANT'S SUBMISSIONS**

10. Counsel for the Applicant filed submissions dated 14<sup>th</sup> November 2025, and identified two issues for determination, as to whether the Applicant has met the threshold for issuance of orders of a temporary injunction with costs of the application.

11. On the first issue, counsel relied on the cases of **Giella V Cassman Brown (1973) EA 358**, which provided the conditions to be met by an applicant seeking temporary injunction orders.
12. On the first condition as to whether the Applicant has established a *prima facie* case with a probability of success, counsel submitted that the Applicant has established an arguable case that warrants the intervention of the court as her complaint rests on the impugned transfer and registration of MAU SUMMIT BLOCK 5/149 in favour of the 1<sup>st</sup> Respondent and relied on the case of **Mrao Ltd V First American Bank of Kenya Ltd & 2 Others [2003] eKLR**.
13. On the second condition, as to whether the Applicant will suffer irreparable harm, if the order is not granted, counsel submitted that the continued interference with the suit property and the subsisting registration in favour of the 1<sup>st</sup> Respondent stood to irreversibly alter the proprietary position of the parties rendering the suit nugatory. Further, once third-party dealings, developments or dispositions proceed under the impugned title, the resulting interests, once vested would not be easily reversible even if the Applicant were to ultimately succeed. He relied on the case of **Nguruman Limited V Jan Bonde Nielsen & 2 Others [2014] eKLR**.
14. On the final condition, where if the court is in doubt, the application is to be determined on a balance of convenience, counsel submitted that the balance of convenience tilted in favour of the Applicant and in allowing the Respondents to continue exercising rights under the disputed title compromised the substratum of the suit should the Applicant succeed in the suit.

15. Mr. Karanja, also filed supplementary submissions where he submitted that where an action is grounded on fraud, time begins to run when the fraud is discovered, and relied on Section 25(a) of the Limitation of Actions Act. He further submitted that the Applicant discovered fraud in 2020 and therefore the suit and application was filed within time.
16. On the issue of costs, counsel submitted that the application ought to be allowed with costs, and relied on the case of **Orix Oil Limited V Paul Kabeu [2014] eKLR**.

#### **RESPONDENTS' SUBMISSIONS**

17. Counsel for the Respondents filed submissions dated 29<sup>th</sup> January 2026, and identified two issues for determination, namely, whether the Plaintiff/Applicant has met the legal threshold for the grant of orders of an interlocutory injunction and whether the suit and the application herein are time barred.
18. On the first issue, he relied on the case of **Giella V Cassman Brown (supra)** and submitted that the Applicant has not established a *prima facie* case since the said parcel MAU SUMMIT/MOLO BLOCK 5/149 did not exist. Counsel further submitted that the Applicant has failed to produce any evidence linking the Respondent' parcels to the alleged suit land, and in the absence of proof of occupation, interference or trespass upon the pleaded parcel, no infringement of any right has been established.
19. Mr. Githui submitted that the portions of land which the Defendants have been in occupation of, at all material times were as a result of the subdivision of the parcel of land known as MAU SUMMIT/MOLO BLOCK5/188.

20. It was counsel's submission that the 1<sup>st</sup> Respondent surrendered his parcel No. **MAU SUMMIT/MOLO BLOCK 7/325 (TAYARI)** which the Applicant accepted, and thereafter executed an affidavit confirming acceptance of the parcel of land declaring to have no further claim from the 1<sup>st</sup> Defendant.
21. On the issue whether the Applicant will suffer irreparable loss, it was counsel's submission that there was no evidence that showed that the Respondents continued occupation of their respective parcels posed an irreversible harm to the Applicant, and relied on the case of **Nduati & 2 others v Chemutai & 3 others (Environment & Land Case E080 of 2024) [2025] KEELC 3550 (KLR)**.
22. Mr. Githui, submitted that the Respondents stood to suffer more should the orders sought be granted since they legally purchased the portions that arose from the subdivision of the parcel known as MAU SUMMIT/MOLO BLOCK 5/188. Counsel stated that should the court grant the orders sought, the Respondents would be unjustly deprived of the use and enjoyment of their portions of land, which are entirely unrelated to the parcel in dispute.
23. On the second issue as to whether the suit and the application are time-barred, counsel relied on Section 7 of the Limitation of Actions Act and submitted that in the absence of fraud, the cause of action would have accrued more than 12 years ago. Further that there was no fraud as alleged by the Applicant since in 1999 she instructed the 2<sup>nd</sup> Respondent to subdivide the two parcels which she thereafter sold to the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. Counsel urged the court to dismiss the application with costs.

#### **ANALYSIS AND DETERMINATION**

24. The main issue for determination is whether the applicants have met the threshold for the grant of a temporary injunction pending hearing and determination of the suit. The principles for the grant of temporary injunctions

are well settled as per the conditions that were stipulated in the **Giella V Cassman Brown case (supra)**, namely, prima facie case, irreparable harm and balance of convenience.

25. Similarly, Order 40 Rule 1 of the Civil Procedure Rules 2010 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*
- b. that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit 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.*

26. From the Affidavits and the averments of the Applicant and the Respondents, there is no doubt that they had a relationship where the suit parcels of land belonged to the Applicant through transmission from her late husband. The Respondent admits that he had been engaged by the Applicant to assist with the subdivision and processing of the titles to the resultant portions.

27. It is also apparent that the same was done but the problem arose when she went to pick the title of the remainder of the parcel that was supposed to be registered in her name. The Respondent further admitted that he had surrendered his parcel of land **MAU SUMMIT/MOLO BLOCK 7/325 (TAYARI)** of which the Applicant accepted. At this preliminary stage, the question is, why was the Respondent compensating the Applicant if there was no problem? This shows that the Applicant has proved that she has a prima facie case, which requires the preservation of the substratum of the case pending the hearing and determination of this suit.
28. I agree with counsel for the Applicant that if the orders sought are not granted, and the suit parcels pass to other third parties it would cause irreparable harm as it would take a longer time to rectify the damage that would have been done causing more injury.
29. The Respondent claimed that the suit is time-barred. It is on record that when the Applicant discovered that her title had been transferred without her knowledge, she reported the matter to DCI, where she recorded a statement. This shows that there was an alleged discovery of fraud that was under investigation.
30. Section 26 of the Limitations of Actions Act states as follows:  
*“Where, in the case of an action for which a period of limitation is prescribed, either-*  
*(a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or*  
  
*(b) the right of action is concealed by the fraud of any such person as aforesaid; or*

*(c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it: Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which-*

*(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or*

*(ii) in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.”*

31. Section 26 of the Limitation of Actions Act provides that where fraud is alleged, time starts running from the time fraud was discovered Similarly, in the case of **Sichuan Huashi Enterprises Corp. Limited v Micheal Misiko Muhindi [2019] eKLR** the court held as follows:

*“13. The law as I understand it is that the defence of limitation of time is a matter for determination at the trial; it cannot be dealt with in a summary manner or at preliminary stage or as a preliminary objection. The court should formulate limitation as one of the issues for determination and decide it on evidence adduced at the trial.*

*On this see the case of Oruta & Another vs. Nyamato [1998] KLR 590, where the court held that limitation of action:*

*“...could only be queried at the trial but not by...a preliminary objection...The appellant could raise the*

*objection at the trial and the trial judge would have to deal with the matter on the evidence to be adduced at the trial”*

14. See also the case of *Divecon Ltd vs Shirinkhanu S. Samani Civil Appeal No. 142 Of 1997*, where the court quoted with approval the words of Gachuhi, J.A., the leading judge in the *Oruta* case (*ibid*) that:

*“It will be up to the judge presiding at the trial to decide the issue of limitation as one of the issues but not as a preliminary point. The raising of the preliminary issue that would cause the suit for the plaintiff to be struck out is not encouraged by the Limitation of Actions Act...”*

32. The issue as to whether the suit is time-barred or not cannot be raised at this preliminary stage. The court has already dealt with it and applied Section 26 of the Limitation of Actions Act.

33. In the Court of Appeal case of **Charter House Investments Ltd Vs Simon K. Sang & 3 Others (2010) eKLR**, it was held that:

*“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the Court requires protection and maintenance of the status quo. The award of a temporary injunction by Courts of equity has never been regarded as a matter of right even where irreparable injury is likely to result to the Applicant. It is a matter of sound judicial discretion, in the exercise*

*of which the Court balances the convenience of the parties and possible injuries to them and to third parties.”*

34. Having considered the application, I find that the Applicant has established a *prima facie* case with a probability of success, as the impugned titles emanated from the suit land, which is in contention. I therefore order that the *status quo* obtaining be maintained pending the hearing and determination of the suit with costs to the Applicant.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 4<sup>TH</sup>  
DAY OF MARCH 2026.**

**M. A. ODENY  
JUDGE**