

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KISUMU

ELC OS NO. E007 OF 2026

IN THE MATTER OF THE LAND REGISTRATION ACT 2012 (CAP 84)

LAWS OF KENYA

AND

IN THE MATTER OF SECTION 38 OF THE LIMITATION OF ACTIONS ACT

(CAP 22) LAWS OF KENYA

BETWEEN

JACOB OTIENO OLWAL APPLICANT

VERSUS

NOAH ONYANGO OJENYARESPONDENT

R U L I N G

The application before the court for determination is the Notice of Motion dated 17th February, 2026, expressed to be brought pursuant to the provisions of sections 1A, 1B, and 3A of the Civil Procedure Act and Orders 40 Rule 1, 2, and 3 and 51 Rule 1 of the Civil Procedure Rules.

The application was not opposed. Affidavit of service sworn by Patrick Okwiry, a Process Server on 3rd March, 2025 shows that the Respondent was served with the application, the court orders

issued on 20th February, 2025, the Originating Summons and other accompanying documents on 21st February, 2025.

There was no response filed. There was also no attendance by the Respondent on 5th March, 2026 for the hearing.

Counsel for the Applicant urged the court to allow the application.

The prayers sought in the application are firstly for an order of temporary injunction restraining the Respondent, his employees or agents from interfering with the Applicant's possession and occupation of the land parcel No.KISUMU/KONYA/1922 pending hearing and determination of the suit, and secondly, for an order that the Land Registrar, Kisumu County, be directed to register an inhibition on the suit land pending hearing and determination of the suit.

The grounds upon which the application was brought were that the Applicant has been in actual, hostile, open and continuous uninterrupted possession of the suit land for a period of over 13 years since the year 2012.

That the Respondent has, without any colour of right, invaded the suit land on 16th December, 2025, with a view to evicting the Applicant.

That unless the actions of the Respondent are restrained, the suit herein shall be rendered nugatory.

I have considered the application, the grounds upon which it was brought, and the averments in the Supporting Affidavit and the annexures thereto.

Under Order 40 Rule 1, pursuant to which the application is brought, I find that the Applicant has demonstrated that the suit land is in danger of being alienated. I further find that if the Applicant is evicted from the land as claimed, his claim in the Originating Summons may be defeated. The Applicant has demonstrated a prima facie case with a probability of success.

As regards the prayer for an order of inhibition, the essence is to preserve the records in respect of the suit land pending the hearing of the suit. I find that the prayer is merited. I allow the application in terms of prayers 3 and 4 thereof.

Costs shall be in the main suit.

Orders accordingly.

Ruling dated and signed at Kisumu, read this 5th day of March, 2026, virtually through Microsoft Teams Online Application.

E. ASATI

JUDGE

In the presence of:

Maureen: Court Assistant.

Khisa h/b for Akinyi for the Applicant.

Respondent present in person.