



**Gachukia v M’Nabea & 3 others (Land Case E334 of 2024)
[2026] KEELC 1449 (KLR) (20 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1449 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E334 OF 2024
TW MURIGI, J
FEBRUARY 20, 2026**

BETWEEN

ALLAN NGUGI GACHUKIA PLAINTIFF

AND

FRANCIS MUTUA M’NABEA 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

DIRECTOR OF SURVEYS 3RD DEFENDANT

HONORABLE ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. Before me for determination is the Notice of Motion dated 13th August 2024, brought pursuant to Sections 2 and 10 of the *Judicature Act*, Rule 3(1) and (2) of the High Court Practice and Procedure Rules, Section 3A of the *Civil Procedure Act*, Order 11, Rule 3, Order 40, Rule 1 of the Civil Procedure Rules 2010, and Section 68 of the *Land Registration Act* No. 3 of 2012, in which the Plaintiff/Applicant seeks the following orders:
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. That pending the hearing and determination of this Suit, an inhibition order against the registration of any dealings and an injunction be issued, restraining the Respondents, their agents, employees, or persons claiming under them from alienating, transferring, or encroaching upon a parcel of land delineated as L.R. No. 15013 (Nairobi Block 189/432), being Title No. I.R 52911/3.



- v. That High Court Civil Suit No.1935 of 1994 Allan Ngugi Gachukia -versus- Francis Mutua M'nabea, Trade Bank Limited (in liquidation), Deposit Protection Fund Board be consolidated with this suit and heard together.
 - vi. That the costs of this application be borne by the Respondents.
 - vii. That this Honorable Court do grant any other and further order that it may deem fit and just to grant, so as to preserve the subject matter of this suit and expedite its adjudication.
2. The application is based on the grounds appearing on its face together with the supporting affidavit of Allan Ngugi Gachuki, sworn on even date.

The Applicant's Case

- 3. The Applicant averred that he has been the registered proprietor of L.R. No. 15013, now Nairobi Block 189/432, since 1992, having purchased it from Nyari House Limited and taken possession.
- 4. He averred that the purchase of the suit property was financed by a Kshs. 550,000 loan from Trade Bank Limited, secured by a charge on the title, and that the loan was fully repaid in January 1993. He asserted that the bank failed to discharge the charge and release the original title before it was placed under statutory liquidation later that year.
- 5. He averred that Trade Bank was placed under statutory liquidation on 18th August 1993, and that the Deposit Protection Fund Board was appointed as the liquidator. He explained that he filed Nairobi HCCC No. 1935 of 1994 after the bank failed to release the discharged title and in response to an alleged attempt by the 1st Respondent to encroach on the property. Consequently, the Court issued orders restraining Trade Bank, its liquidator, and the 1st Respondent from trespassing on or disposing of the suit property.
- 6. He averred that the suit property was transferred under the Land Registration (Registration Units) Order, 2017, and re-referenced as Nairobi Block 189/432 pursuant to Kenya Gazette Notice dated 5th August 2022.
- 7. He averred that he later discovered that the 1st Respondent colluded with officers of the 2nd and 3rd Respondents to rely on a forged title and a counterfeit deed plan to claim the suit property. He argued that the disputed title and deed plan contained numerous forgeries intended to deprive him of the suit property.
- 8. He relied on the correspondence dated 6th August 2024 from the Trade Bank liquidator to assert that the original title remained undischarged. He stated that he has since filed Nairobi HCCOMMMISC/E605/2024 to compel Trade Bank in liquidation to issue the discharged original title.
- 9. The Applicant is apprehensive that, unless restrained, the Respondents might encroach upon, alienate, or register prejudicial dealings against the suit property, thereby defeating his proprietary rights and rendering the suit nugatory.
- 10. He argued that this matter should be consolidated with Nairobi HCCC No. 1935 of 1994 because the issues are similar, to avoid conflicting judgments.
- 11. He maintained that the balance of convenience favored preserving the status quo and restraining the Respondents, particularly the 2nd and 3rd Respondents, from registering any dealings pending the determination of the main suit.



The 1st Defendant's Case

12. The 1st Respondent filed a Notice of Preliminary Objection dated 27th January 2025 in opposition to the application. He challenged the competency of the suit and the attendant application on the basis that they violated Section 6 of the *Civil Procedure Act*.
13. It was contended that the issues raised in this suit are directly and substantially in issue in Nairobi HCCC No. 1935 of 1994 and that the parties involved are substantially similar.
14. He maintained that the present suit and proceedings were premature and an abuse of the Court's process. It was further contended that the issues were already under consideration before a competent court, and that this Court consequently lacked jurisdiction.
15. The 1st Defendant also filed a replying affidavit dated September 25, 2025, in opposition to the application. He contended that he is the beneficial owner of L.R. No. 15083/14, now known as Nairobi Block 189/43, and that he and his family have maintained open, continuous, and uninterrupted possession of the property for more than thirty years.
16. He asserted that the Applicant's claims related to events that allegedly occurred in the early 1990s and had been brought after an inordinate delay.
17. He explained that the Applicant had previously filed Nairobi HCCC No. 1935 of 1994 regarding the same subject matter, but that the suit had since been withdrawn. He contended that the present proceedings reiterated the issues that were raised in the withdrawn suit and are therefore vexatious.
18. He asserted that the Applicant had failed to meet the threshold for the grant of an injunction.

The Response

19. In his supplementary affidavit, the Plaintiff averred that the 1st Respondent's reliance on the doctrine of adverse possession was legally untenable.
20. He reiterated that he purchased the suit land in August 1992 and financed the purchase with a loan secured by a registered charge.
21. He reiterated that in Nairobi HCCC No. 1935 of 1994, the court issued an order dated 25th October 1996 prohibiting the 1st Respondent from trespassing on the suit property and that the 1st Respondent was aware of those proceedings.
22. He explained that the earlier suit was withdrawn after the present proceedings were filed and then amended to include additional parties and issues.
23. He contended that the 1st Respondent misrepresented to third parties that he is deceased and has purported to transact over the property based on a fraudulent title.
24. He further contended that a claim for adverse possession cannot arise when the property is encumbered by a subsisting charge and when the registered owner asserts his rights through court proceedings. He argued that time does not run against a chargee's interest and that adverse possession cannot arise during the pendency of injunctive orders.
25. He maintains that allowing adverse possession to defeat a charged title would undermine the integrity of secured lending and the statutory framework governing land registration.
26. The application was canvassed by way of written submissions.



The Plaintiff's Submissions

27. The Plaintiff filed his submissions dated 17th November 2025.
28. On behalf of the Plaintiff, Counsel submitted that the Plaintiff had satisfied the principles for the grant of an injunction. Counsel relied on *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR to address the threefold test applicable to injunctions, and on *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR to define what constitutes a prima facie case.
29. Counsel further submitted that the Plaintiff's registered title had not been impeached. Counsel argued that the Defendants had neither challenged the legality of the acquisition nor displaced the indefeasibility of the Plaintiff's proprietorship under Article 40 of *the Constitution* and Sections 24, 25, and 26 of the *Land Registration Act*. To support this point, Counsel relied on Nairobi ELC Petition No. 157 of 2016, *Hellen Wachuka Njoroge v. The Honorable Attorney General and Anor*.
30. Counsel further submitted that the 1st Defendant failed to file a statement of defense or counterclaim in response to the amended plaint, thereby leaving the suit unopposed. To support this point, Counsel relied on *Omalla (Suing as the administrator ad litem of the Estates of William Opondo Omalla, Augustino Omwanda, Henry Mutula, and Dismas Othwilla) v Oriwo & another (Environment and Land Case No. 36 of 2021)* [2023] KEELC 392 (KLR) (2 February 2023).
31. Counsel submitted that introducing a claim for adverse possession through a replying affidavit was procedurally improper because an affidavit is not a pleading. To support this point, Counsel cited *Kithome & another v Haile & another* [2024] KEELC 6407 (KLR) and *Superior Homes (Kenya) PLC v Water Resources Authority & 9 others* [2024] KECA 1102 (KLR).
32. Counsel relied on *Kiprop Kanda v. Gabriel Biwot Kanda & 3 others* (Court of Appeal at Eldoret, Civil Appeal No. 219 of 2003) (UR) to argue that adverse possession is a substantive claim that must be specifically pleaded and prosecuted either by originating summons under Order 37, Rule 7 of the Civil Procedure Rules, or by raising it as a defense or counterclaim.
33. Counsel further submitted that the 1st Defendant did not tender any evidence to support the alleged claim of adverse possession and cited Section 107(1) of the *Evidence Act* regarding the burden of proof. Further reliance was placed on *Mwaura v Joreth Limited & 2 others* (Environment and Land Case No. 189 of 2009) [2024] KEELC 4181 (KLR) (9 May 2024) to argue that adverse possession must be proved by evidence of open, continuous, and exclusive possession.
34. Counsel submitted that time could not run in favour of the 1st Defendant because the Plaintiff had asserted his rights by filing Nairobi HCCC No. 1935 of 1994. Counsel relied on *Kiplagat v Krelkut* (Miscellaneous Application No. 330 of 2017) [2024] KEELC 4245 (KLR) (17 May 2024) and the principle in *Githu v Ndeete* [1984] KLR 776 to submit that time ceases to run when the owner asserts his right through legal proceedings.
35. Counsel contended that adverse possession cannot arise from occupation in defiance of court orders. Counsel relied on *Mbala & 22 others v Makau & 2 others* (Environment and Land Case No. 23 of 2021) [2023] KEELC 19060 (KLR) (18 July 2023) and *Gabriel Mbui v Mukindia Maranya* (High Court Civil Case No. 283 of 1990, Meru) to argue that unlawful and inequitable possession cannot establish prescriptive rights.
36. Regarding irreparable harm, Counsel submitted that damages would not be an adequate remedy given the land's unique character and the risk of unlawful alienation. To support this point, Counsel relied on *Panari Enterprises Limited v Ljoodi & 2 others* [2014] eKLR, *Halsbury's Laws of England*,



Third Edition, Volume 21, paragraph 739, and *Ndeffo Co. Ltd v Ndegwa & 4 others* (High Court at Nairobi, Civil Suit No. E024 of 2023) [2024] KEHC 4436 (KLR). Counsel further submitted that the balance of convenience favored preservation of the suit property and relied on *Bryan Chebii Kipkoech v Barnabas Tuitoek Bargorai & another* [2019] eKLR.

37. In conclusion, Counsel urged the Court to allow the application as prayed.
38. Counsel relied on *M’Murithi & another v Kigia* (Environment and Land Court at Meru, ELC Case No. E014 of 2022) [2023] KEELC 17760 (KLR) (7 June 2023) and *Japhet Kaimeny M’ndatho v M’ndatho M’mbwiria* [2012] eKLR to address the threshold for granting an inhibition. Counsel further contended that the refusal of preservation orders would render the suit nugatory and moot, citing *Githuku v Gitichie & 3 others* (Environment and Land Court, ELC Case No. 101 of 2023) [2024] KEELC 4486 (KLR) (6 June 2024), *Stanley Kang’ethe Kinyanjui v Tony Keter & 5 others* [2013] eKLR, and *Samuel Kimani & another v Dominic Kamiri Karanja* [2022] Eklr.

The 1st Defendant’s Submissions

39. The 1st Defendant filed his submissions dated 25th September 2025.
40. On behalf of the 1st Defendant, Counsel submitted that the Plaintiff had failed to meet the threshold for the grant of an injunction.
41. Regarding whether a prima facie case had been established, Counsel relied on *Mrao Ltd v First American Bank of Kenya Limited & 2 Others* [2003] eKLR for the definition of a prima facie case and on *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 for the guiding principles. Counsel submitted that the Plaintiff’s allegation of a forged title was unsubstantiated and that the 1st Defendant had denied any impropriety. Counsel further submitted that the 1st Defendant had been in uninterrupted beneficial possession of the suit property for over thirty years. Counsel also submitted that the withdrawal of Nairobi HCCC No. 1935 of 1994 amounted to abandonment of the Plaintiff’s earlier claim, rendering the present application vexatious and an abuse of process.
42. Regarding irreparable harm, Counsel relied on *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, to argue that the Plaintiff had not shown any real or imminent injury that could not be remedied by damages. In contrast, counsel submitted that the 1st Defendant would suffer grave and irreparable harm if removed from the suit property, which had been his family home for over three decades. Counsel further cited *Kenleb Cons Limited v New Gatitu Service Station Ltd & Another*, Civil Appeal No. 3112 of 1990, to submit that the Applicant had failed to disclose material facts that the 1st Defendant was in occupation.
43. Counsel submitted that the balance of convenience favours the 1st Defendant, who was in possession of the suit property. It was contended that granting the injunction would disrupt the status quo and cause hardship to the 1st Defendant and his family. In contrast, the Plaintiff, who is not in occupation, had not demonstrated that denying the injunction would occasion comparable prejudice.
44. In conclusion, Counsel submitted that the Plaintiff had failed to meet the sequential threshold set out in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, and urged the court to dismiss the application with costs.

Analysis And Determination

45. Having considered the application, the preliminary objection, the respective affidavits and rival submissions, the following issues arise for the court’s determination:



- a) Whether the preliminary objection is merited; and
 - b) Whether the Applicant is entitled to the orders sought.
46. Regarding the first issue, the law on preliminary objections is well settled. A preliminary objection must be on a pure point of law. In *Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd* (1969) EA 696, Law JA stated as follows:
- “So far as I’m aware, a preliminary objection consists of point of law which have 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 or a plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
47. Further on, Sir Charles Newbold JA stated;
- “The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a 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.”
48. In *Oraro vs Mbaja* (2005) eKLR Ojwang J (as he then was) described it as follows;
- “I think the principle is abundantly clear. “A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”
49. For a preliminary objection to be valid, it must be based on a point of law and on facts that are not in dispute. It should not be proved by facts or evidence, nor should it deal with disputed facts.
50. The 1st Defendant argued that the matter was sub judice due to Nairobi HCCC No. 1935 of 1994, which involves the same parties and relates to the same subject matter. The Plaintiff acknowledged the existence of the previous suit.
- i. The Plaintiff informed the Court that Nairobi HCCC No. 1935 of 1994 has been withdrawn. Consequently, the sub judice objection is untenable. Similarly, the request for consolidation cannot be considered without an ongoing suit suitable for consolidation. The prayer for consolidation is declined, the earlier suit having been withdrawn.
51. The Applicant seeks to inhibit the suit property pending the hearing and determination of this suit. Section 68 of the *Land Registration Act* provides that:
1. The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease, or charge.



52. In *Dorcas Muthoni & 2 Others v Michael Ileri Ngari* [2016] KEHC 6213 (KLR), the Court held that:
- “An order of inhibition issued under Section 68 of the *Land Registration Act* is similar to an order of prohibitory injunction, which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed of. The Court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial.”
53. The Plaintiff contends that there is a competing title and deed plan, which he alleges is forged. He further contends that the 1st Defendant, with the involvement of officers of the 2nd and 3rd Defendants, may procure the registration of prejudicial dealings against the suit property.
54. Based on the evidence before me, the dispute is not merely about possession but also about the integrity of the register and the risk of further dealings that could complicate or defeat the suit.
55. In light of the foregoing, this court is satisfied that an inhibition is necessary to preserve the register and prevent any dealings pending the hearing and determination of the suit.
56. Regarding the second issue, the principles applicable in an application for an injunction were laid down in the celebrated case of *Giella vs Cassman Brown & Co Ltd*, 1973 EA 358, as follows.
- a) First, the applicant must show a prima facie case with a probability of success.
 - b) Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
 - c) Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
57. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success.
58. A prima facie case was defined in *Mrao Ltd v First American Bank of Kenya and 2 others*, (2003) KLR 125 as:
- “A Prima facie case in a civil application includes but 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 there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.
59. It is not in dispute that both parties claim ownership of the suit property. The Plaintiff contends that he acquired the suit property in 1992, charged it to Trade Bank Limited, and that the loan was repaid in full. He further contends that the original title has never been released due to the bank’s liquidation. He relies on copies of his title documents, evidence of rate payments, documentation relating to the charge, and Gazette Notice material on migration.
60. The 1st Defendant claims beneficial ownership and long-term occupation of the property.
61. Based on the evidence presented by the parties herein, I find that the Plaintiff has established a prima facie case.



62. On whether the Plaintiff will suffer irreparable harm that cannot be adequately compensated by an award of damages, the Applicant must demonstrate that it is a harm that cannot be quantified in monetary terms. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR:

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which its amount can be measured with reasonable accuracy, or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be an adequate remedy.”

63. The Plaintiff is apprehensive that the suit property would be transferred or alienated if an injunction is not granted.

64. The court is therefore satisfied that the Plaintiff has demonstrated a likelihood of irreparable harm if preservative orders are not granted.

65. On balance of convenience, the Court has to weigh the hardship to be borne by the Applicant by refusing to grant the injunction against the hardship to be borne by the Respondent by granting at the injunction. In *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR:

“The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiff, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called the balance of convenience, it is really the balance of inconvenience, and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer. In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.

66. The 1st Defendant asserts that he has been in possession for over three decades and that he resides on the property with his family. The Plaintiff maintains that he is the registered proprietor and contends that the property has remained undeveloped. The issue of possession is contested, with neither party presenting any evidence to support their claim.

67. Looking at the evidence presented by the parties herein, I find that the balance of convenience favours the preservation of the suit property pending the hearing and determination of this suit.

68. In the result, the Notice of Motion dated 13th August 2024 is allowed in the following terms:

- i. An order of inhibition is hereby issued under Section 68 of the *Land Registration Act*, inhibiting the registration of any dealings in respect of L.R. No. 15013, now Nairobi Block 189/432, being Title No. I.R. 52911/3, pending the hearing and determination of the suit,



or until further orders of this court. The Deputy Registrar shall transmit a sealed copy of the order to the Land Registrar for registration forthwith.

- ii. A temporary injunction is hereby issued restraining the Defendants, their agents, employees, or persons claiming under them from transferring, charging, leasing, subdividing, entering into, or procuring the registration of any dealings or dispositions over the suit property pending the hearing and determination of the suit.
- iii. The preliminary objection dated 12th November 2025 is dismissed.
- iv. The costs of the application to abide by the outcome of the suit.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF FEBRUARY, 2026.

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HON. T. MURIGI

JUDGE

In The Presence Of:

Ms Munyua for the Plaintiff

Ms Odhiambo holding brief for Ngugi for the 1st Defendant

