

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**NANYUKI**  
**ELC LC OS NO. E004 OF 2025**

**MERCY WAIRIMU JETHRO & 7 OTHERS.....**  
**PLAINTIFFS**

**VERSUS**

**JOSEPH GATHECA GICHOHI.....1<sup>ST</sup>**  
**DEFENDANT**

**JACINTA WAITHIRA.....2<sup>ND</sup>**  
**DEFENDANT**

**RULING**

**1.** Before me is a notice of motion application dated 19.5.2025 filed contemporaneously with the suit. The plaintiff seeks orders of injunction restraining the 1<sup>st</sup> respondent from evicting them from parcel Laikipia/Daiga/Ethi Block 2/150. The applicants contend that they have lived on the suit land since 1988.

2. The 1<sup>st</sup> defendant has opposed the application vide his replying affidavit dated 23.9.2025. He contends that he is the registered owner of the suit property but denies that the plaintiffs have been there since 1988, adding that the register of the suit land was opened on 10.6.1991. He contends that in year 2016, he instituted eviction proceedings against the 4<sup>th</sup> applicant of which he got the orders on 20.8.2019. The 4<sup>th</sup> plaintiff filed an appeal no.3 of 2023 which was dismissed.

3. I have considered the rival arguments. The principles underpinning the grant of temporary injunctions are well settled. The same are found in the celebrated case of **Giella vs Cassman Brown (1973) EA 358** where it was stated thus:

**“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. 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.”**

Also see; **Nguruman Limited V Jan Bonde Nielsen & 2 Others [2014] eKLR.**

4. In their suit, the plaintiffs are claiming the suit land via the doctrine of adverse possession averring that they have lived on the suit land for a period of over 30 years. The applicants admit that there was a suit filed before the Magistrate’s court but the 4<sup>th</sup> plaintiff was not aware of the same and that his appeal was dismissed.
5. A perusal of the judgment delivered in the Magistrates court at Nanyuki ELC 141 OF 2018 reveals that an order of permanent injunction was issued against Bernard Musembi Muli (the current 4<sup>th</sup> plaintiff) and anybody claiming interest under him from occupying the suit land. The appeal against that decree was dismissed. The

current plaintiffs are claiming their interest under the 4<sup>th</sup> plaintiff. In that regard, the issuance of the orders sought would be in conflict with orders lawfully given by a competent court. Thus the application dated 19.5.2025 is found to be unmerited, the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS  
18<sup>TH</sup> DAY OF MARCH 2026 THROUGH MICROSOFT  
TEAMS.**

**LUCY N. MBUGUA  
JUDGE**

**In the presence of:**

Ms. Omwenga for holding brief for Wangechi Gathua for Applicant.

Ms. Maina for 1<sup>st</sup> Respondent.

G.M.N for 2<sup>nd</sup> Respondent.

Nancy Mwangi – Court Assistant.