

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA**  
**ELCLC No. E027 OF 2025**

**JOSHUA CHIEF NYANDIGISI, FREDRICK NYANDIGISI  
& GILBERT NYANDIGISI (Suing as the personal  
representatives of  
JOHNSON NYANDIGISI MAOGA .....  
PLAINTIFFS**

**VERSUS**

**KENYA NATIONAL HIGHWAYS AUTHORITY  
(KeNHA) .....  
..... DEFENDANT**

**RULING**

1. The Plaintiffs moved the Court through Plaint dated 4<sup>th</sup> November 2025 wherein they averred that they were the personal representatives of the estate of Johnson Nyandigisi Maoga (deceased) who was the registered proprietor of the plot known as Kebirigo Market Plot No. 34 (suit property).
2. The Plaintiffs further averred that they erected a petrol station and other permanent structures on the suit property which had existed for over forty years and on which relied for their livelihood. That the Defendant had issued to them a demolition notice dated 9<sup>th</sup> October 2025 ordering demolition of the building within the suit property within 30 days from the said date, citing encroachment on the road reserve. The Plaintiffs

stated that the demolition notice threatened their proprietary rights as they had not encroached on the road reserve.

3. The Plaintiffs therefore sought judgment against the Defendant for the following orders:

a) *A declaration that JOHNSON NYANDIGISI MAOGA (Deceased) is the sole bona fide proprietor of the freehold interest comprised in the plot of land known as KEBIRIGO MARKET PLOT No. 34 measuring 50ft by 100ft and situated within Kebirigo Market, Nyamira Town.*

b) *A declaration that the Demolition notice dated 9<sup>th</sup> October, 2025 issued by the Defendant herein is invalid, null, unlawful and/or unprocedural in line with the provisions of the Constitution of Kenya 2010 in respect of the right of protection of property guaranteed to the Plaintiffs.*

c) *An order of permanent injunction restraining the Defendant either by its agents, servants, employees or persons claiming through itself from trespassing on, demolishing, evicting the Plaintiffs, erecting structures, constructing a road and/or in any manner interfering with the Plaintiff's proprietary rights and interests over and in respect of parcel of land known as KEBIRIGO MARKET PLOT No. 34 situated within Kebirigo Market, Nyamira County.*

*d) General damages for trespass.*

*e) Costs of and incidental to the suit.*

4. Alongside the Complaint, the Plaintiffs filed Notice of Motion dated 4<sup>th</sup> November 2025, which is the subject of this ruling. The following orders are sought in the application:

*a) [Spent]*

*b) [Spent]*

*c) Pending the hearing and determination of the suit, the Honourable Court be pleased to grant an Interim Order of Injunction restraining the Defendant/Respondent either by itself, agents, servants, employees or anyone claiming under the said Respondent from entering upon, trespassing onto, blocking access, taking possession of, demolishing or in any other way whatsoever interfering with the Plaintiffs/Applicant's right over the suit property, that is the parcel of land known as KEBIRIGO MARKET PLOT No. 34 situated within Kebirigo Market, Nyamira County.*

*d) The County Commander Nyamira County and/or any nearby Police Station to ensure compliance with the orders sought.*

*e) Costs of this Application be borne by the Defendant/Respondent.*

*f) Such other orders that the court may deem fit and expedient to issue.*

5. The application is based on the grounds listed on its face and is supported by an affidavit sworn by Joshua Chief Nyandigisi, one of the Plaintiffs. He deposed that the deceased was the proprietor of the suit property and that they erected a petrol station and other permanent structures on it which relied on for their livelihood. That the Defendant had issued to them a demolition notice dated 9<sup>th</sup> October 2025 ordering demolition of the building within the suit property by 9<sup>th</sup> November 2025. That the Defendant claimed that they had encroached on the road reserve. He added that ownership of the suit property was undisputed and that Defendant had not demonstrated any encroachment on the road reserve. That unless the orders sought were granted, the suit property would be destroyed and the substance of the suit rendered nugatory.
6. The Defendant opposed the application through Grounds of Opposition dated 27<sup>th</sup> November 2025. They contended that the application was misconceived, that the Plaintiffs' developments encroached approximately five (5) meters into the designated road reserve as confirmed by official survey records, road reserve maps and a joint survey conducted with the County Government of Nyamira.
7. The Defendant further stated they lawfully issued the demolition notice in accordance with Section 49 of the Kenya

Roads Act, 2007, to allow voluntary removal of the unauthorized structures and that the Plaintiffs had failed to provide any approved development plan, beacon certificate, or survey evidence to demonstrate that their structures were within the lawful boundaries of the suit property. The Defendant contended that it acted within its legal mandate and urged the Court to dismiss the application with costs.

8. The application was canvassed through written submissions. The Plaintiffs filed submissions dated 18<sup>th</sup> November 2025 and further submissions dated 12<sup>th</sup> December 2025 while the Defendant filed submissions dated 4<sup>th</sup> December 2025.
9. I have carefully considered the application, the affidavit in support, the grounds of opposition and the submissions. The sole issue for determination is whether the orders sought should issue.
10. The Plaintiffs seek an interlocutory injunction. The principles applicable while considering such an application are that the applicants must establish a *prima facie* case with a probability of success. Even if they succeed on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the Court is in doubt as to whether damages will be an adequate compensation then the Court will determine the matter on a balance of convenience.
11. The above conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicants are

expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See **Giella -vs- Cassman Brown & Co Ltd [1973] EA 358** and **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**.

12. The Plaintiffs' case, which is supported by a verifying affidavit in respect of the Plaintiffs' case and an affidavit in support of the application, is that they have not encroached on the road reserve. The Defendant has not filed any affidavit to counter the Plaintiffs' assertions. Instead, the Defendant was content to rely on grounds of opposition.

13. The Defendant's claims, made through averment in the grounds of opposition, that the Plaintiffs' developments encroached approximately five (5) meters into the designated road reserve and reliance on alleged official survey records and a joint survey conducted which have not been introduced as evidence, are of little help. It hardly needs any legal elaboration to see that the Plaintiffs' statements made on oath carry more weight than the Defendant's bare assertions made without any supporting evidence.

14. I am satisfied that the Plaintiffs have established a *prima facie* case with a probability of success. The threat that they face is demolition of their property which include a petrol station and other structures. Damages will not be an adequate remedy in the circumstances.

15. I find merit in the prayer for an injunction. I will however not grant the prayer seeking involvement of the police since this is a civil dispute and there are adequate procedures within the **Civil Procedure Rules** for enforcement of an injunction. As the Court of Appeal held in **Kamau Mucuha v Ripples Ltd [1993] KECA 82 (KLR)**, the police should never be involved in such matters.

16. Arising from the foregoing, I make the following orders:

**a) Pending hearing and determination of this suit, an injunction is hereby granted restraining the Defendant whether by itself, agents, servants or anyone claiming under it from entering upon, trespassing onto, blocking access, taking possession of, demolishing or in any other way whatsoever interfering with the Plaintiffs' right over the parcel of land known as Kebirigo Market Plot No. 34 situated within Kebirigo Market, Nyamira County.**

**b) In line with Order 40 rule 6 of the Civil Procedure Rules, the injunction shall, unless extended by the Court, remain in force for a period of only twelve months from the date of this ruling or until the case is determined, whichever occurs first. Consequently, parties are reminded to expeditiously prosecute the suit.**

**c) The Plaintiffs shall have costs of the application.**

**Dated, signed, and delivered at Nyamira, this 25<sup>th</sup> day of March 2026.**

**D. O. OHUNGO  
JUDGE**

Delivered in the presence of:

Mr Ochoki for the Plaintiffs

Mr Macharia for the Defendant

Court Assistant: B Kerubo