

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA
ELC CASE NO. E001 OF 2026 (OS)

JANET BARASA SHALAKA 1ST
APPLICANT
SELINAH NYAKO SHALAKA.....2ND
APPLICANT

-VERSUS-

PATRICK LUMBASI MUCHIKA.....RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion application dated 27^h January 2026 filed by the applicant seeking the following orders:

a) Spent.

b) Spent.

c) That the Honourable Court be pleased to issue orders restraining the respondent either by himself or through his agents and or representatives from interfering with the boundary features separating the portion of land parcel number South Kabras/Samitsi/433 occupied by the applicants from the portion occupied by the respondent, destroying the properties of the applicants on their portions of land, cutting down trees and nappier grasses belonging to the applicants, fencing and or doing anything to interfere with the applicants use and occupation of their portions of land parcel number South Kabras/Samitsi/433 pending the hearing and determination of the suit herein.

d) That the costs of this application be provided for.

2. The application is predicated on the supporting affidavit of the 1st applicant sworn on 27th January 2026. The applicants' case is that together, they purchased parcel No. South Kabras/Samitsi/ 433 and registered it in the name of one Enock Tawai Muchika to hold it in trust for them.

3. The 1st applicant further deponed that she took possession of 0.9 Ha, the 2nd applicant took possession of 0.9 Ha and Enock Tawai took possession of 0.4 Ha. That there are established boundaries on the suit property. That Enock passed on before transferring the suit property to the applicants. That upon the death of Enock, they filed Kakamega Succession Cause No. 192 of 1993 and upon confirmation of the grant, they obtained their respective titles. That they have developed their respective portions. That the respondent filed an application for revocation of grant which application was allowed and their titles cancelled. That they were referred to make their claim before this court. That the respondent has began interfering with their use and occupation of the suit property and destroying their property. That he has now fenced their land to deny them access.

4. The application was opposed. The respondent filed replying affidavit dated 3rd February 2026. He stated that he was the administrator of the estate of Enock Muchika who was his father and who died in 1991. That the

applicants secretly filed Succession proceedings in respect of his father's estate and that upon objection, their titles were cancelled. That the applicants are guilty of fraud. That the applicants have never occupied the suit property. That they have no legitimate interest in the suit property and they have not met the threshold for grant of temporary injunction.

5.The application was disposed by way of written submissions. On record are submissions filed by the applicants dated 10th February 2026 and those by the respondent dated 19th December 2026; both of which the court has duly considered.

Analysis and determination

6.The court has carefully considered the application, the response thereto as well as submissions and authorities cited. In my considered view, the issue that arises for this court's determination is whether the applicant has met the conditions for grant of temporary injunction pending hearing and determination of this suit.

7. Order 40 Rule 1 of the Civil Procedure Rules grants this court the jurisdiction to grant temporary injunction where it is shown that the subject matter of the suit is at risk of waste, damage, alienation, disposal or sale in execution of a decree; and where it is demonstrated that if an injunction is not granted, there would likely be a delay or obstruction in the execution of any decree that may eventually be passed in favour of the plaintiff.

8. To obtain a temporary injunction, it is trite that an applicant must demonstrate that they have a *prima facie* case with chances of success; that they stand to suffer irreparable loss that may not be compensated in damages and where the court is in doubt, it ought to decide on a balance of convenience. (**See Giella v Cassman Brown [1973] EA 158**).

9. A *prima facie* case was described in the case of **Mrao Ltd v First American Bank of Kenya and 2 Others (2003) KLR** as follows;

“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 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.”

10. In the instant case, the application herein is founded on the applicant's allegation that he has acquired rights over the suit property under the doctrine of adverse possession. He is therefore obligated to demonstrate a *prima facie* case with chances of success on the question of adverse possession. A claim for land based on the doctrine of adverse possession is anchored on exclusive, hostile, and open possession of the disputed land without permission from the true owner thereof, for a statutory period of 12 years.

11. On the question of a *prima facie* case, the applicants stated that they are in occupation of the suit property and attached photographs showing houses on the suit property. Although the respondent contested the averment on occupation, no contrary evidence was provided. In the circumstances, I am satisfied that the

applicants have established a *prima facie* case with chances of success.

12.The respondent has not denied interfering with the applicants' occupation in the manner alleged. That being the case I am satisfied that the applicants have demonstrated that if the injunction is not granted, they stand to suffer irreparable injury.

13.Regarding the balance of convenience, the applicants being in possession of the suit property, the balance of convenience tilts in favour of granting the injunction.

14.In the premises, I find and hold that the application dated 27th January 2026 is merited and the same is hereby allowed as follows;

a) This Honourable Court hereby issues orders restraining the respondent either by himself or through his agents and or representatives from interfering with the boundary features separating the portion of land parcel number South Kabras/ Samitsi/433 occupied by the applicants from the portion occupied by the respondent, destroying the properties of the applicants on their portions of land, cutting

down trees and nappier grass belonging to the applicants, fencing and or doing anything to interfere with the applicants use and occupation of their portions of land parcel number South Kabras/Samitsi/433 pending the hearing and determination of the suit herein.

b) Costs of this application are awarded to the applicants

15.It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA
IN OPEN COURT/VIRTUALLY THROUGH
MICROSOFT TEAMS VIDEO CONFERENCING
PLATFORM THIS 4TH DAY OF MARCH 2026**

**A. NYUKURI
JUDGE**

In the presence of;

Mr. Manyoni for the applicant

The respondent in person

Court Assistant: Delphine