

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
NANYUKI
ELC LC NO. E013 OF 2024

LAWRENCE MWANIKI GICHOHI.....
.....PLAINTIFF

VERSUS

HENRY KIPROP SOME.....1ST
DEFENDANT

HARON KIBOINO CHERUIYOT.....2ND
DEFENDANT

FRANCIS MWANGI KIHARA.....3RD
DEFENDANT

THE CHIEF LAND REGISTRAR.....4TH
DEFENDANT

THE LAND REGITRAR, RUNURUTI.....5TH
DEFENDANT

THE HONOURABLE ATTORNEY
GENERAL.....

RULING

- 1.** Before me is a notice of motion application dated 5.5.2025 filed by the plaintiff who is seeking injunctive orders against the defendants. He contends that he is the legal owner of parcel Residential Plot No. E in Rumuruti Township, having been allotted the same in 1996. However, the 1st defendant pursued the registration of the same plot into his name and with a new No. Rumuruti Township Block 3/141, subdivided the said land into several plots Nos; 3/211-224, then transferred parcel 3/217 to the 3rd defendant. That the 3rd defendant has deposited building materials and is in the process of constructing a petrol station. This ruling relates to the 3rd defendant only.
- 2.** The 3rd defendant opposes the application vide his Replying Affidavit dated 21.10.2025. He confirms that he purchased the suit land from the 1st defendant and he now has a title to that effect. That he has since

constructed a petrol station thereon after obtaining all the relevant approvals.

3. I have considered the rival arguments. Each claimant is alleging to be the lawful owner of parcel 3/217, the one apparently in the hands of the 3rd defendant. In the case of **Cyanamid Co. vs Ethicon Ltd (1975) 1 ALL ER 504; (1975) A.C 396 HL** cited in **Tritex Industries Limited & 3 others vs National Housing Corporations & another_[2014] eKLR**, it was held that;

“It is no part of the court’s function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend, nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial”.

4. I find that the question of ownership ought to be dealt with in a full trial and not in interlocutory applications. In the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR**, the court stated that in establishing whether an applicant has a prima-facie case, the court does not hold a mini trial and must not examine the merits of the case closely.
5. Similarly, the court cannot delve into the question of contested issues of ownership at this stage of the trial. It is incumbent upon the warring parties to adduce evidence at the trial in support of their claims.
6. As at now, I find that the 3rd defendant has availed photographs indicating that the petrol station has been put up. In such circumstances, it would be unjust to halt the establishment of the same.
7. In the end, I find that the application dated 5.5.2025 is not merited, the same is hereby dismissed, the costs thereof shall abide the outcome of the suit. However, the court gives an order that parcel 3/217 shall not be alienated.

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

**LUCY N. MBUGUA
JUDGE**

In the presence of:

Maxwell Gichuhi for plaintiff.

Bundotich for 1st and 2nd defendants.

Mwangi for 3rd defendant.

Nancy Mwangi - Court Assistant.