

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC CASE NO. 151 OF 2018

**FATUMA MOHAMMED HUSSEIN, TWAHA MOHAMED HUSSEIN
ABSURA and ZAKARIA MOHAMMED HUSSEIN** (*suing as the
administrators of the Estate of MOHAMED HUSSEIN ABSURA
(Deceased)*):.....**PLAINTIFFS/APPLICANTS**

VERSUS

UNITED CARE LIMITED:.....**1ST DEFENDANT/RESPONDENT**
AMIR FAUD AHMED:.....**2ND DEFENDANT/RESPONDENT**
ASHA ABDULKADIR:.....**3RD DEFENDANT/RESPONDENT**
CHIEF LAND REGISTRAR:.....**4TH DEFENDANT/RESPONDENT**

RULING

The application is dated 26th January 2026 and is brought under Section 1A, 1B, 3A & 63 of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules, 2010 seeking the following orders;

1. That this application be certified urgent and service at first instance be dispensed with, and the same be heard in priority exparte.
2. That pending the inter parties Hearing and determination of this Application and to preserve the suit property, the Honourable Court be and is hereby pleased to Order the Ward Commander/Officer Commanding Station,

Syokimau Police Station to ensure immediate compliance with the subsisting injunctive Order of 5th April 2019 issued by this Hon. Court and enforce the same.

3. That to preserve the suit property, the Honourable Court be and is hereby pleased to Order the Ward Commander/Officer Commanding Station, Syokimau Police Station to ensure immediate compliance with the subsisting Injunctive Order of 5th April, 2019 issued by this Hon. Court and enforce the same.
4. That the Honourable Court be and is hereby pleased to issue any further Orders and/or directions as may be necessary to give effect to the Orders sought herein and that it deem fit in the interest of justice.
5. That the costs of this application be provided for.

It is based on the supporting Affidavit sworn by Fatuma Mohamed Hussein, Twaha Mohamed Hussein Absura and Zakaria Mohammed Hussein and grounds that the Plaintiff/Application lodged the suit herein seeking to assert their legal and lawful proprietorship rights over all that property known as LR. NO 12715/690. Contemporaneously, the Applicants further lodged a Notice of Motion dated 30th July, 2018 seeking inter alia an interim injunction for purposes of preserving the suit property being LR. NO. 12715/690 pending hearing and determination of the suit herein.

That in finding merit in the Plaintiffs/Applicants aforesaid Application, this Honourable Court proceeded to deliver a Ruling on the 5th of April 2019 in favor of the Plaintiffs/Applicants wherein the Defendants/Respondents herein were restrained from interfering with the suit property, being LR. NO. 12715/90 pending the hearing and determination of the suit, and subsequently an Order to that effect was issued on 11th April, 2019. Notwithstanding the existence and knowledge of the court order extracted on 11th April, 2019, the 1st, 2nd and 3rd Defendants have now aggressively accelerated the unlawful construction on the suit property calculated to steal a march and render this pending proceedings otiose and moot. As a self-help measure the Plaintiff/Applicants have sought for the enforcement of the subject order by the Ward Commander/Officer Commanding Station, Syokimau Police Station; which request was regrettably ignored supposedly for the reason that the order was not addressed to him. The above recent developments have necessitated the institution of this application to ensure enforcement of a validly subsisting court order by the Ward Commander/Officer Commanding Station, Syokimau Police Station for purposes of upholding the rule of law and dignity of this Hon. court and its proceedings. By the time the suit is set down for hearing and its final determination, the Plaintiffs/Applicants will be exposed to insurmountable loss and damage as the continued unlawful and illegal occupation and construction by the 1st, 2nd and 3rd Defendants/Respondents on the suit property

continues to alter the nature of the property which alterations are permanent in nature. Further, the Plaintiffs/Applicants stand to be gravely prejudiced if the orders sought herein are not granted as if their claim herein succeeds they are likely to incur further costs in removing the said illegal structures and defending third party claims in court for a further protracted length of time. Causing them irreparable loss and damage.

The Plaintiff/Applicant has instituted the suit herein, which suit has a very high probability of success, and thus it is not only just and mete, but also proportionate in the totality of circumstance before court, that the suit property be preserved pending the hearing and final determination of the suit herein. Further, absolutely no plausible prejudice can be suffered by any of the adverse parties in having this Application certified urgent and the orders herein granted. The actions of the Defendants/Respondents are calculated to scandalize the proceedings before this Hon. Court thereby exposing the Plaintiffs/Applicants the Hon Court and the very administration of justice of ridicule, odium, disrepute and contempt. It is in the interest of justice that the Honorable Court speedily asserts its lawful authority and enforce the administration of justice and unless the Hon. Court ensures enforcement of its lawful orders, the Defenders/Respondents shall continue the construction works on the suit property being LR. NO 12715/690; not only

occasioning great prejudice to the Plaintiffs/Applicants but nefariously render the suit nugatory and the Hon. Courts orders otiose and moot.

This court has considered the application and the supporting affidavit. The 1st Defendant/Respondent filed a replying affidavit denying any involvement in the alleged construction and or development on the suit property. I have perused the court file and indeed find that by a ruling dated the 5th of April 2019 the Defendants/Respondents herein were restrained from interfering with the suit property, being LR. NO. 12715/90 pending the hearing and determination of the suit. This application is dated 26th January 2026 which is over 6 years later. This matter was filed in court in 2018! It is not possible to establish from the record when this alleged construction started and what the status is now. I find that the Plaintiff/Applicant has been indolent and has never set this matter down for hearing. The parties are advised to comply with order 11 and set this matter for hearing. This application is unmerited and is dismissed. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24TH DAY OF MARCH 2026.

N.A. MATHEKA

JUDGE

ORIGINAL