

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MIGORI

ENVIRONMENT AND LAND CASE NO. OF 2025 (OS)

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION
PURSUANT TO SECTION 7, 13,17, 37 AND 38 OF THE
LIMITATION OF ACTION ACT CHAPTER 22**

AND

**IN THE MATTER OF SECTION 80 OF THE LAND
REGISTRATION ACT, CAP NO. 3 OF 2012**

AND

**IN THE MATTER OF AN APPLICATION FOR RECTIFICATION
OF THE REGISTER**

AND

**IN THE MATTER OF ORDER 40 RULE (1); ORDER 9 RULES 1 -
8 AND ORDER 37 RULES 3,7 AND 14 OF THE CIVIL
PROCEDURE RULES, 2010**

AND

**IN THE MATTER OF LAND PARCEL NO.
BUKIRA/BUHIRIMONONO/ 581**

BETWEEN

**BOKE CHACHA MWITA.....1ST
PLAINTIFF/APPLICANT**

**HANNAH NIERI MWITA.....2ND
PLAINTIFF/APPLICANT**

**STEPHINE MAGAIWA.....3RD
PLAINTIFF/APPLICANT**

VERSUS

**SIBORA NYAKEHORE
MANGERA.....RESPONDENT/DEFENDANT**

RULING

The Application

1. By a Notice of Motion dated 5th November 2025 the applicants moved this court under Order 51 Rule 1 of the Civil Procedure Rules and Section 3A and 3 of the Civil Procedure Act Chapter 21 Laws of Kenya and what he referred to as “all the enabling provisions of the law”. They sought Orders that: -

1. ...Spent

2. ...Spent

3. Pending the Hearing and determination of the summons herein, the Honorable Court be pleased to direct the County Land Registrar Migori to place a restriction stopping any dealings on the register of land parcel no. BUKIRA/BUHIRIMONONO/581.

4. THAT cost of this application be provided for.

2. The application was based on the ground that land parcel no. Bukira/Buhirimonono/581 measuring approximately 3.6 Ha was registered in the name of the deceased Muturi Nyagena Maroa on 27th June 1986 until on 25th July 1995 when it was transferred to Sibora Nyakehore. This registration was done through transmission, in her capacity as the legal representative of the estate of Muturi Nyagena Maroa.

3. The applicants contented that defendant now being the registered owner of the suit land was likely to dispose it off and transfer it to unsuspecting third parties. Such an act,

they maintained would complicate the litigation herein and render the suit nugatory. Thus, they averred that this court should grant and order of injunction restricting any dealing with the title pending hearing and determination of the Originating Summons herein.

- 4.** Further, the applicants averred that they have been in open and uninterrupted occupation of the whole of land parcel in excess of 12 years. They maintained that they had occupied the said suit land for over 37 years, since 1988 and that the said possession has been open to the defendant, quiet and on the suit land and had been cultivating it, with the current crops on it being maize and cassava.
- 5.** As for the 2nd plaintiff, she averred that she lived with her husband on the suit land until he died was buried on the suit parcel.
- 6.** The 3rd plaintiff averred that he has been farming on the land and he currently has maize crop as well as eucalyptus on the suit land. Besides, he maintained that he has a store on the suit property where he keeps his farm produce.
- 7.** Further to the above, the plaintiff averred that they had no other land and that the defendant has never cultivated or occupied any portion of the land hence she will not be prejudiced should the orders sought in the application be granted. They maintained that the interests of justice favour the grant of the orders sought in their application.

8. The application was supported by the Affidavit sworn by Boke Chacha Mwita, the 1st Plaintiff. He deponed that he had authority to plead documents and swear affidavit on behalf of the 2nd and 3rd defendant. The court has considered the said affidavit and notes that its contents are similar to those contained in the application save to add that the applicants annexed several annexures to the said affidavit. These annexures are: Authority to plead, copy of the register of the suit land, photographs of cassava and maize crop grown on the suit land, photographs of the 1st applicant's homestead, and photographs of the maize and eucalyptus plantation.

The response

9. The respondent filed a replying affidavit dated 27th November 2025. She deponed that the applicant's application was lacking in merit, and as such, ought to be dismissed with costs. She also deponed that the application is a scheme aimed at acquiring her land illegally since each of the applicants had their distinct parcels of land and that the said applicants had never occupied any parcel of her land.

10. With regard to the 1st applicant, the respondent deponed that the said applicant had only lived on her land for nine year after coming back from Tanzania where she had migrated to. This occupation, the respondent maintained was permitted by herself because the 1st applicant did not have a place to live at the time.

11. The respondent deponed that the 2nd respondent was a stranger to her land and that she had never occupied and/or utilized her land since the said land was registered in her name.
12. As for the 3rd applicant, the respondent maintained that he had his parcel of land, which had transmitted to him by way of succession. He annexed a copy of the green card records to the said land.
13. The respondent deponed that none of the applicants had met the threshold for the grant of the orders sought and maintained that the application was not merited and the said application amounted to a waste of the court's valuable time.

Submissions

14. The application was canvassed by way of written submissions. The applicants filed their submissions dated 4th December 2025. They identified one issue for determination, that is, whether the applicants have proven the requisite conditions underpinning the grant of an order of temporary injunction.
15. The respondents submitted that this court has jurisdiction to grant the orders sought by virtue of order 40 rule 1 of the Civil Procedure Rules. They cited the case of **Giella vs Cassman Brown [1973] EA 378** thus where the court set out the principles governing the grant of injunctions. These principles are that the applicant must

demonstrate a prima facie case, demonstrate that the/she will suffer irreparable loss and that the balance of convenience tilts in favor of granting the injunction.

- 16.** As to whether the applicants had established a prima facie case, they submitted that they had demonstrated to the court that they had lived and on the suit land and cultivated the same for 37 years. They alluded to the various activities they have carried out on the suit land including the burial of the 2nd applicant's husband on the suit land.
- 17.** As to whether the applicants would suffer irreparable loss, it was submitted that the suit land sustain the applicants' livelihoods and the it is their exclusive property. they argued that, other than the respondent being the registered owner, the said respondent has no other right that can claim from the suit land. On this basis the applicants submitted that they will suffer irreparable harm should the prayers they seek in their application not be granted.
- 18.** Concerning the last limb of the test established in **Giella v Cassman Brown**, the applicants maintained that they will suffer greater inconvenience should their prayers be disallowed.
- 19.** The applicants submitted that the applicant is purely meant to preserve the suit property pending the hearing and determination of the main suit and prayed that their application be allowed.
- 20.** The respondent did not file her submissions.

Issues, Analysis and Determination

- 21.** It is worth noting that Prayer 2 which is about injunction was sought on a temporary basis and was to last to the time of determination of the application. It was thus spent. Thus, the issues that arise for determination in the instant application are: whether the applicants' application is merited and who should bear the costs of the application.
- 22.** Prayer 3 of the applicant's application seeks this court's intervention in directing the county land registrar Migori to place a restriction stopping dealing on the suit property. The applicants have demonstrated that they are in occupation and utilization of the suit property.
- 23.** Section 68 of the Land Registration Act, 2012 gives this court the power to inhibit registered dealings in land in the following terms:
- “68 power to inhibit registered dealings*
- (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.*
- (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.’*

24. Although the applicants approached this court seeking a restriction, this reprieve is granted by the registrar while inhibitions are granted by the court. section 76 of the land registration provides for restrictions and is couched as hereunder:

6. Restrictions

(1)For the purposes of compulsory acquisition the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

25. The applicant's prayer seeking this court intervention in restricting dealings in the land can then only be understood to mean an inhibition, since the said order is expected to emanate from this court as opposed to being made by the registrar as provided under section 76 of the land registration Act.

26. Inhibitory orders are necessary to safeguard dealings in the subject matter of the suit pending further orders by the court. Granting such an order therefore ensures that future orders of the court will not be in vein. This position was

affirmed by the court in **Miriti & another v Kalayu (Civil Appeal E013 OF 2023) [2023] KEHC 26632 (KLR) (14 December 2023) (Ruling)** where the court held that:

“ Section 68(1) of the Land Registration Act,2012, gives this court the discretion to inhibit registered dealings on land for a particular time or until the occurrence of a particular event. As such, an inhibition order is an order which is in the nature of a prohibitory injunction restraining dealings on land pending further orders by the court. The purpose of the said order is to preserve the property from acts that would otherwise render a court order incapable of being executed and/or to give an opportunity to hear and decide the matter....”

27. In Githinji v Mararo (Environment and Land Appeal e026 of 2021) [2025] KEELC 6941 (KLR) (9 October 2025) (Ruling), the court outlined the conditions necessary for the grant of inhibitions. The court thus held that:

The conditions necessary for the grant of an order of inhibition were set out in the case of Japhet Kaimenyi M'Ndutho v M'ndatho M'Mbwiria(2012)eKLR, which are:

“In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions: -a) That the suit property is at the risk of being disposed of, alienated or

transferred to the detriment of the applicant unless preservatory orders of inhibition are issued b) That the refusal to grant orders of inhibition would render the applicant's suit nugatory c) That the applicant has an arguable case.

The court has the power to grant orders of inhibition against a suit land restricting registration of any dealing with suit land for a particular time or until the occurrence of a particular event or generally until further orders."

28. I have analyzed the application in its entirety, the respondent's replying affidavit and the submission filed by the applicants. I note that the applicants are laying claim over the respondent's parcel of land by virtue of adverse possession. They have annexed to their supporting affidavit photographic evidence of their alleged occupation and utilization of the suit property. Equally, the respondent has demonstrated that respondent is the registered owner of the suit property since the year 1995, by which period they claim to have been in occupation and utilization of the suit land.

29. Although the applicants have not demonstrated that there is a risk of the said suit parcel of land being alienated by the respondent, the court has a duty to preserve the suit property pending the hearing and determination of the suit herein. If the land were to be alienated, the same would

complicate the litigation herein. Whenever the court is of the opinion that there is need to preserve a property by issuance of an order, it acts under Section 68(1) of the Land Registration Act, and this is the provision this court will act on herein.

30. The upshot of the foregoing is that prayer 3 of the application is allowed. Therefore, this orders that, **“Pending the hearing and determination of the summons herein, this Court hereby issues and order directing Land Registrar in charge of Migori County to place an inhibition stopping any dealings on the register of land parcel no. Bukira/Buhirimonono/581.”**

31. The costs of this application shall be in the Cause. This matter shall be mentioned on 20th May 2026 for compliance purposes under Order 11 of the Civil Procedure Rules. Trial bundles to be filed before then. The applicant is directed to serve both the outcome and the mention notice on the Respondent.

32. Orders accordingly.

Ruling dated, signed and delivered virtually via the Teams Platform this 19th day of March 2026.

HON. DR. IUR NYAGAKA
JUDGE

In the presence of,
Jura for the Applicant

No appearance for Kerario Marwa for the Respondent