

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELCLOM NO. E001 OF 2026**

**DHAHABU KAHINDI MASHA** .....  
**PLAINTIFF**

**VERSUS**

**JOSEPH KAHINDI MWENI** ..... **1<sup>ST</sup>**  
**DEFENDANT**

**KKB INFORMAL SETTLEMENT SCHEME** ..... **2<sup>ND</sup>**  
**DEFENDANT**

**LAND REGISTRAR KILIFI** ..... **3<sup>RD</sup>**  
**DEFENDANT**

**RULING**

1. The notice of motion dated 15<sup>th</sup> January 2026 is seeking a temporary injunction restraining the respondents, their successors and or assigns from evicting the applicant or in any way interfering with the applicant’s quiet possession on **Plot Number 47 (Formerly Plot Number 423)** within Kilifi town Kasarani area pending the hearing of the present suit.
2. The suit is an adverse possession claim in which the plaintiff alleges that she and her family have been in actual possession of the suit properties since 1994 and has established a thriving business thereon. The application is supported by the sworn affidavit of the applicant dated 15<sup>th</sup> January 2026.
3. The application is opposed by the 1<sup>st</sup> respondent who filed a replying affidavit dated 2<sup>nd</sup> February 2026. He deponed that he purchased the suit property when the plaintiff was a tenant there on living in a temporary mud-walled *makuti* house thereon; that thereafter, the plaintiff continued to pay rent in the sum of Kenya Shillings 200/=

per month; that however, over time, she took advantage of the plaintiff's long stay up country and, in cahoots with the 2<sup>nd</sup> defendant, purported to register the suit land in her own names; that when the 1<sup>st</sup> defendant confronted her, she conceded she had no such right and the plot registration was reverted to the 1<sup>st</sup> defendant, and he and the plaintiff executed an agreement which ensures that the suit property has remained the plaintiff's property ever since.

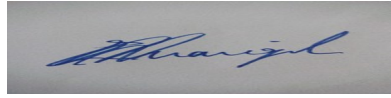
4. The 1<sup>st</sup> defendant's claim therefore is that the plaintiff is on the suit property with his consent; that however the applicant and his adult children are now putting up a permanent house which they have rented to third parties for business; that the dispute was reported by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant regarding the said activity. That vide an affidavit made on 8<sup>th</sup> December 2025, the applicant conceded that the suit property belongs to the 1<sup>st</sup> defendant. The dispute was escalated to the National Land Commission (NLC) which after hearing both parties directed that the suit property be reinstated into the 1<sup>st</sup> defendant's name. That the NLC's decision has not been challenged or quashed by way of judicial review. The deponent further states that the contents of the affidavit are contradictory in that some parts claim that she is the owner, while some other parts claim that she is seeking be registered as owner under the doctrine of adverse possession.
5. The application was disposed of by way of written submissions. The applicant filed submissions dated 25/1/2026 while the respondent

filed submissions dated 27/2/2026. I have considered both sets of submissions in the preparation of this ruling.

6. This court has taken note that both the applicant and the respondent are apprehensive of one another's conduct with regard to the suit property; that whereas the applicant is wary of being evicted and her adverse possession claim being defeated by resultant loss of possession and thus seeks injunctive orders, the 1<sup>st</sup> respondent is apprehensive that the applicant is conducting developments of a permanent nature that will alter the state of the suit property completely.
7. The conclusion of this court is that both parties required to be restrained from any activities with regard the suit land pending the hearing of the main suit so that the present status of the suit land is preserved until finalization of these proceedings.
8. Consequently, this court orders as follows:
  - a. The motion dated 15<sup>th</sup> January 2026 is allowed in terms of prayer number c thereof with their additional condition that the plaintiff shall cease all developments thereon pending the hearing and determination of the present suit.**
  - b. Since a response has already been filed to the originating summons, directions are hereby given that the originating summons shall be heard as though commenced by way of plaint and that the OS and the supporting affidavit shall be deemed as the Plaint while the replying affidavit shall be deemed as the Defense.**
  - c. Hearing shall be by way of viva voce evidence.**
  - d. Hearing of the main suit shall be on 23<sup>rd</sup> September 2026 and 24<sup>th</sup> September 2026 and all witnesses for both sides shall be availed without fail.**

9. It is so ordered.

**Dated, signed and delivered at Malindi on this 14<sup>th</sup> Day of April, 2026.**

A rectangular box containing a handwritten signature in blue ink, which appears to read "Mwangi Njoroge".

**MWANGI NJOROGE,  
JUDGE, ELC, MALINDI.**