

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
BUNGOMA
ELC EP MISC APPLICATION NO. E001 OF 2025

WILSON JUMA FWAMBA
PLAINTIFF

VERSUS

DICKSON TOM WANJALA
DEFENDANT

RULING

Through the application dated 23/10/2025, the Plaintiff sought a temporary injunction to restrain the Defendant from obstructing, fencing, occupying or otherwise interfering with the access road serving the land known as Ndivisi/Muchi/7253 pending hearing of the suit. The application was made on the grounds that the Plaintiff is the lawful owner of Ndivisi/Muchi/7253, which is served by an access road on which the Defendant had unlawfully constructed thereby obstructing the access road. Further, that the Plaintiff had suffered and continued to suffer irreparable loss and damage as a result of the construction.

The Plaintiff swore the supporting affidavit in which he deponed that on or about 20/10/2025, the Defendant unlawfully entered the access road designated by the planning authorities and commenced construction thereby blocking his access to his land. He averred that he made reports to the relevant authorities but

the Defendant continued the obstruction. He annexed photographs showing building materials on the land and his letter dated 27/12/2024 seeking the intervention of the Ministry of Interior and Coordination of National Government, Office of the Assistant Chief and assistance to access his home. He also annexed a copy of the mutation form with a sketch showing the part obstructed together with a copy of his title deed for Ndivisi/Muchi/7253.

The Defendant swore the replying affidavit in opposition to the application. He admitted that the Plaintiff was the registered owner of Ndivisi/Muchi/7252 but denied constructing on the access road and blocking the Plaintiff from accessing his home. He stated that he was constructing a structure on his land, Ndivisi/Muchi/8494 and maintained that the construction did not encroach on the Plaintiff's access road as he claimed. He added that the Plaintiff had all along accessed his home while the structure which he demolished was there and that he still had access to his home. He claimed that after the Plaintiff made several reports to the relevant authorities, when the Assistant Chief visited their plots and examined the access road, he did not find any problem on the access road. That that prompted him to write a letter to the land registrar, Bungoma County to visit the two parcels of land. He urged the court to dismiss the application and allow him to continue the construction.

The application was argued on 16/2/2026. The Plaintiff told the court that the Defendant was duly served but failed to attend

court. He argued that the construction on the access road was going on and continued to prejudice him. He urged the court to grant an interim injunction to restrain the Defendant from continuing construction on the access road pending hearing of the dispute pursuant to Section 13 of the Environment and Land Court Act and Order 40 of the Civil Procedure Rules.

The issue for determination is whether the court should grant a temporary injunction to restrain the defendant from continuing construction on the access road that serves the Plaintiff's home, pending hearing and determination of the dispute. The Defendant does not dispute the fact that the Plaintiff owns Ndivisi/Muchi/7253 and that he is undertaking some construction. His only contention is that the Plaintiff has access to his home and that he had not closed his access road.

The court is satisfied on a balance of probabilities, that the Plaintiff stands to suffer prejudice unless the construction, which he claims is on the access road, is stopped until the dispute is determined.

The Defendant is restrained from constructing, fencing, occupying or interfering with the access road serving the land known as Ndivisi/Muchi/7253 pending hearing and determination of the suit. The costs of the application will be in the cause.

Delivered virtually from Nanyuki this 10th day of March 2026.

K. BOR

JUDGE

No appearance for the Parties

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