



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC LAND CASE NO. E017 OF 2025

HUMPHREY GITARI KENYA.....1ST
PLAINTIFF
MUTUA NYAGA.....2ND
PLAINTIFF
KIMATHI NYAGA.....3RD
PLAINTIFF
ROSE NYAGA.....4TH
PLAINTIFF

=VERSUS=

**CIANTHUNI WILSON NJAGI (*Sued as the*
Legal Representative of the estate of
M'RIRIA M'IRAMBU alias
WILSON NJOKA - Deceased).....
DEFENDANT**

RULING

1. The four plaintiffs initiated this suit through an originating summons dated 8/12/2025. The originating summons was taken out under **Sections 7** and **38** of the **Limitation of Actions Act**. Through the originating summons, the 4 plaintiffs sought to be registered as proprietors of 16 acres

out of land parcel number **Karingani/Ndagani/349** (measuring approximately 32.6 acres) under the doctrine of adverse possession. They also sought to be registered as proprietors of 3 acres out of parcel number **Karingani/Muiru/437** (measuring approximately 10.3 acres) under the same doctrine.

2. Together with the originating summons, the plaintiffs brought a notice of motion dated 8/12/2025, seeking an order of inhibition barring dealings in the parcel registers relating to the two land parcels, pending the hearing and determination of the suit. The said application is the subject of this ruling. The application was vehemently opposed by the defendant. I will briefly outline the parties' respective cases before I analyse and dispose the key issue that falls for determination in the application.
3. The application was premised on the grounds outlined in the motion; in the supporting affidavit sworn by **Humphrey Gitari** on 8/12/2025; and in the oral submissions tendered by **Ms Chishenga** on 27/1/2026. The case of the applicants is that the respondent is the widow of the late **M'Riria M'Irambu** (*the deceased*) and the administratrix of his estate. She is in the process of concluding succession to the estate of the deceased vide **Chuka High Court Succession Cause No E010 of 2025**. She has excluded the applicants from the list of beneficiaries and creditors in the said succession cause.
4. The applicants add that they have been in open, continuous, uninterrupted and adverse occupation and adverse

possession of the two portions of the suit lands for periods exceeding 12 years. They contend that, given that the respondent has excluded them from the succession proceedings, they are apprehensive that they will be left landless and destitute. They urge the court to grant them the inhibition orders.

5. The respondent opposed the application through a replying affidavit dated 16/1/2026. Her case is that she, indeed, initiated succession proceedings relating to the estate of her late husband. Her late husband is the registered proprietor of the two suit parcels. She denies the allegation that she has illegally excluded the plaintiffs from the succession proceedings, adding that the applicants are not truthful.
6. The respondent adds that the 1st applicant is a son to the late **M'Akenya M'Amiru** who belonged to her late husband's clan and to whom her late husband voluntarily gave 4 acres out of one of the suit parcels. She states that the 1st applicant occupies the 4 acres and does not occupy any other portion on either of the two suit parcels.
7. The respondent further states that the 2nd and 3rd applicants are sons of the 4th respondent and children of the late **Sebastian Nyaga** who was a nephew to her late husband. The 4th applicant is a widow of **Sebastian Nyaga**. The respondent adds that her late husband gave 4 acres out of one of the suit parcels to one **Patrick Mukuru** (*a brother to the 2nd and 3rd respondents; a son to the 4th respondent; and also a son to the late Sebastian Nyaga*), adding that the

said **Patrick Mukuru** is supposed to share the 4 acres with the 2nd and 3rd respondents.

- 8.** It is the case of the respondent that the applicants' occupation of the suit parcels was and has been with the express permission of her late husband and her late husband's estate, and that the applicants are close relatives. She denies the allegation that their presence on the suit parcels has been adverse. She adds that her filing of the succession cause interrupted the running of any alleged adverse possession. It is her case that the applicants' apprehension is unfounded.
- 9.** The court has considered the application; the response to the application; and the parties' respective submissions. The applicants seek an order of inhibition in relation to two parcels that are registered in the name of the late **M'Riria M'Irambu**. An inhibition is provided for under **Section 68** of the **Land Registration Act, 2012**. By and large, an inhibition is an interlocutory injunctive order that bars dealings in a land register pending the hearing and disposal of a case. Consequently, the key issue that falls for determination in this ruling is whether the application satisfies the criteria for issuing an ordinary interlocutory injunction in the nature of an inhibition under **Section 68** of the **Land Registration Act, 2012** and **Order 40** of the **Civil Procedure Rules**.
- 10.** The relevant criteria on ordinary interlocutory injunctions was outlined by the Court of Appeal for East Africa in the case of **Giella v Cassman Brown (1973) EA 358**. First, the

applicant is required to demonstrate a *prima facie* case with a probability of success. Second, the applicant is required to demonstrate that if the plea for an interlocutory injunction is declined, he will stand to suffer damage that may not be adequately indemnifiable through an award of damages. Thirdly, should the court have doubt on either or both of the above, the application is to be determined on the basis of the balance of convenience.

11. Over the years, our superior courts have developed a fourth principle to the effect that, at the stage of disposing the plea for interlocutory injunction, the court should refrain from making conclusive or definitive pronouncements on the key issues in the dispute. The courts have emphasized that definitive and conclusive pronouncements/findings should be reserved for the final disposal of the dispute.

12. The Court of Appeal defined a *prima facie* case in ***Mrao Ltd v First American Bank of Kenya Ltd & 2 others*** as follows:

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

13. Have the applicants demonstrated a *prima facie* case with a probability of success? The applicants’ claim is anchored on the common law and statute law doctrine of adverse

possession. They contend that their title to the suit land has crystallized under the doctrine of adverse possession because they have been in adverse possession of portions of the suit parcels for more than the prescribed minimum period of 12 years. The respondent filed a replying affidavit in which she deposed that she is the widow (*and the administratrix of the estate*) of **M'Riria M'Irambu** alias **Wilson Njoka**(*deceased*). She added that she filed a succession cause relating to the estate of her late husband, but denied the allegation that the said proceedings are intended to unlawfully exclude the applicants from the estate. It is her case that her husband was the registered proprietor of parcel numbers **Karingani/Ndagani/349** and **Karingani/Muiru/437**.

- 14.** The respondent further deposed that the 1st applicant is a son to **M'Akenya M'Amiru** who belonged to the same clan with her late husband and who was given 4 acres out of one of the suit parcels. It is the case of the respondent that the 1st applicant only occupies the 4-acre portion that was given to **M'Amiru**.
- 15.** The respondent further deposed that the 2nd and 3rd plaintiffs are sons of **Sebastian Nyaga** who was a nephew to her late husband (*the late M'Irambu*). She added that the 4th plaintiff is a widow of the late **Sebastian Nyaga**. It is her case that one **Patrick Mukuru**, who is a brother to the 2nd and 3rd applicants and a son to the 4th applicant, was given 4 acres by the late **M'Irambu** and the said **Patrick Mukuru** is supposed to share with the 2nd and 3rd applicants the 4 acres.

- 16.** From the above interlocutory evidence from both sides, it does emerge that the applicants have had and still have some presence on portions of the suit parcels. Whether their presence has been adverse is a question to be answered after trial. Also to be answered after trial is whether the applicants have acquired a crystallized title to the suit parcels under the doctrine of adverse possession.
- 17.** Secondly, it does emerge that there are ongoing succession proceedings relating to the estate of the late **M'Irambu**. The court has looked at the succession papers exhibited by the respondent. None of them reflects the conceded beneficiaries as disclosed beneficiaries or as disclosed creditors in the succession cause. Given the above circumstances, the court finds that the plaintiffs have made a proper prima facie case warranting the preservation of the relevant parcel registers for a limited period of time during which they will be expected to prosecute their claim.
- 18.** On irreparable damage, the plaintiffs contend that they reside on the suit parcels. Disposal of the parcels through succession will create complicated issues for the plaintiffs and may result into their being uprooted from what they allege to be their homes.
- 19.** The balance of convenience, similarly, favours preservation of the parcel registers relating to the suit parcels for a limited duration. Consequently, the court finds that the criteria for granting an ordinary interlocutory injunction in the nature of an inhibition has been satisfied.

20. For the above reasons, the court hereby issues an order of inhibition barring registration of dealings, including transmissions, in the land registers relating to land parcel number **Karingani/Ndagani/349** and **Karingani/Muiru/437**. Unless extended by the court, the above inhibition order shall lapse on expiry of 10 months from today. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 23RD DAY OF APRIL, 2026.

B M EBOSO [MR]
ELC JUDGE

In the Presence of:

Ms. Mutema Advocate for the Defendant

Ms. Chishenga Advocate for the Plaintiffs

Court Assistant - Nicholas