



Muthaiga Ngugi. In paying the purchase price, the Plaintiff did so in an open manner through the 1<sup>st</sup> Defendant's advocate G.M. Muhoro. Secondly, all through the payment of the purchase price, the fencing of the land, the occupation and the development of it, the officials of the 1<sup>st</sup> Defendant assured the Plaintiff that all was well. This is especially so because the suit land had not been officially transferred to the Plaintiff. Thirdly, in a fraudulent manner the 1<sup>st</sup> Defendant in cahoots with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants secretly and unlawfully transferred the suit land to the 2<sup>nd</sup> Defendant after secretly lifting the caution that the Plaintiff had registered against the suit land. The Plaintiff did not take this lying down. He reported the matter to the Land Fraud Investigation office at the Directorate of Criminal Investigations Headquarters at Mazingira House and he is still waiting for their action. Fourthly, some unknown persons trespassed into the suit land, cutting down the Plaintiff's trees and claiming to be the owners. It later turned out that these people included the 2<sup>nd</sup> Defendant. Finally, in a deliberate move to complicate the case even further, the 4<sup>th</sup> Defendant gave clearance to the 2<sup>nd</sup> Defendant to use the suit land as a security to secure a loan of Kshs. 14,471,790 from the Cooperative Bank of Kenya.

For the above and other reasons, the Plaintiff prays for the orders as above.

- (3) The motion is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and in this connection, Peter Kamande Mungai, the Director and Chairman of the 1<sup>st</sup> Defendant has sworn a replying affidavit dated 6-10-2025. The second defendant has also sworn a replying affidavit dated 2-12-2025.
- (4) The response by the 1<sup>st</sup> Defendant is as follows. One, the suit land, Makuyu/Kimorori/1928 is a subdivision of, Makuyu/Kimorori/1609. All the subdivisions of L.R. No. 1609 are the subject of litigation in Murang'a ELC Case No. E028 of 2022, Ngimu Farm vs Patrick Njuguna Kariuki and 6 Others. The Plaintiff is the 5<sup>th</sup> Defendant in the suit where the 1<sup>st</sup> Defendant seeks cancellation of the transfers and the subdivisions of L.R. No. 1609. Two, in the suit No. E028/2022, the 1<sup>st</sup> Defendant's case is that the Plaintiff in this case procured registration of the suit land by fraudulent means. The mother title for L.R. No. 1609 is currently being held by the firm of Wambugu and Muriuki advocates who act for the liquidator of the now defunct Kenya Planters Co-operative Union (KPCU). KPCU holds the titles to the properties belonging to the 1<sup>st</sup> Defendant as security for a loan. It is the 1<sup>st</sup>

Defendant's case that neither the Plaintiff nor the 2<sup>nd</sup> Defendant are in possession or control of the suit land. Their occupation is recent after a major survey exercise which was recently conducted by the District Surveyor exercise on all the property belonging to the 1<sup>st</sup> Defendant. Three, granting the Plaintiff leave to institute these proceedings would convolute the proceedings in ELC case No. E028 of 2022 and this will results in a multiplicity of suits. Finally, the Plaintiff has evaded the filing of a defence and counterclaim in EO28/2022 in a bid to defeat the course of justice and avoid being held accountable for his significant role in defrauding the 1<sup>st</sup> Defendant of its many properties. This suit should be consolidated with ELC E028/2022 so that the whole dispute can be conclusively dealt with.

- (5) In his response the 2<sup>nd</sup> Defendant states as follows. Firstly, he lawfully purchased the suit land from the 1<sup>st</sup> Defendant pursuant to an agreement dated 31-5-2013 after which he was issued with a title deed. Secondly, he took immediate possession of the land which was vacant and built a house which he resides in. All the developments of the suit land happened openly, continuously and without any objection from any person including the Plaintiff. If the Plaintiff bought the suit land in 2002, he has no title deed or possession yet the land had no encumbrances when the 2<sup>nd</sup> Defendant purchased it. Thirdly, the suit is time barred for having been filed outside the time allowed by the Limitation of Actions Act. The Plaintiff has therefore not established a prima facie case with a probability of success to warrant the orders that he seeks.
- (6) Counsel for the parties filed written submissions dated 24-2-2026 and 9-4-2026 respectively.. Only the Plaintiff's counsel identified two issues for determination. Counsel for the 2<sup>nd</sup> Defendant did not identify any issues for determination.
- (7) I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavits, the written submissions and the law cited therein. I agree with the Plaintiff's counsel that the two issues identified will resolve the motion. The issues are as follows.
- (i) **Whether this suit is properly filed as per the statute of limitation.**
  - (ii) **Whether this court should grant a temporary injunction pending the hearing and determination of the suit.**

(8) On the first issue, I am not sure when the fraud alleged was discovered by the Plaintiff. It however seems to be a continuing fraud which is still pending investigations by the DCI. In the affidavit by the chairman of the 1<sup>st</sup> Defendant, he stated as follows at paragraph 12 of the replying affidavit.

**“...These parties have only recently began interfering with our quiet possession of our properties upon a major resurvey exercise which was recently conducted by the District Surveyor or all the properties belonging to Ngimu Farm Limited.”**

The Defendants have not yet filed any defences even though I directed in July 2025 that they be served with all the pleadings and summons to enter appearance. Further to this, the 1<sup>st</sup> Defendant is inviting the Plaintiff to file these pleadings in ELC E028/2022. This would seem to be an admission that the Plaintiff’s claim is within time. Until I have all the pleadings including a possible reply to defence, I cannot determine if the suit is time barred or not. A Court of law would rather sustain a suit rather than dismiss it without first having all the facts. See **DT Dobie and Company (Kenya) vs. Joseph Mbaria Muchina and another [1980] eKRL.**

(9) As for the second issue, I find that the Plaintiff has established a prima facie case with a probability of success. He has shown by oral and documentary evidence that he paid for land belonging to the 1<sup>st</sup> Defendant and he has never got the land because he was forcibly evicted from it without due process. None of the Defendants has responded to this claim by the Plaintiff. If the application is not allowed, the suit land could be alienated to the detriment of the Plaintiff. The substratum of the suit should therefore be preserved until the suit is heard and determined. For the above stated reasons, **I allow** the notice of motion dated 24-6-2025 in terms of **prayer (iv)**.

Costs in the cause.

**Dated, Signed and Delivered virtually at Murang’a this 27<sup>th</sup> day of April, 2026.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of; -**  
Court Assistant – Anthony  
Plaintiff’s Counsel – Mr. Thuo  
1<sup>st</sup> Defendant’s Counsel – Mr. Wahome  
2<sup>nd</sup> Defendant’s Counsel – Mr. Githinji

