



**Magumba & 3 others v Musonye & 3 others (Environment and Land  
Case E033 of 2025) [2026] KEELC 2639 (KLR) (27 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2639 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E033 OF 2025**

**TW MURIGI, J  
APRIL 27, 2026**

**BETWEEN**

**EVANCE MUDANYA MAGUMBA ..... 1<sup>ST</sup> PLAINTIFF  
JAMES OBURA ODUOR ..... 2<sup>ND</sup> PLAINTIFF  
GODFREY ADENYA MALWEYI ..... 3<sup>RD</sup> PLAINTIFF  
KENNEDY NZOLE MATAKA ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**DAVID MUKAMITI MUSONYE ..... 1<sup>ST</sup> DEFENDANT  
GALLEON INVESTMENTS LIMITED ..... 2<sup>ND</sup> DEFENDANT  
EVANGELINE NYAWIRA MURIUKI ..... 3<sup>RD</sup> DEFENDANT  
SIMON MWANGI KAMAU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion dated 19<sup>th</sup> June 2025, brought under Sections 17, 18, 37, and 38 of the [Limitation of Actions Act](#), Orders 37 Rule 7 and 51 Rule 1 of the Civil Procedure Rules, the Plaintiffs/Applicants seek the following orders:
  - i. Spent.
  - ii. Spent.
  - iii. Spent.
  - iv. That this Honourable Court be pleased to issue a temporary order of injunction restraining the Defendants whether by themselves, their servants, agents, or any person whomsoever from doing any of the following acts that is to say evicting, demolishing the Plaintiffs/



Applicants structures/houses, removing the lorries packed therein, selling, leasing, charging or otherwise howsoever interfering with the Plaintiff's/Applicant's quiet, peaceful, actual and exclusive possession, user, development and enjoyment of the parcel of land known as Title Number 209/10263 now converted to NAIROBI/BLOCK 160/61 pending the hearing and determination of this suit.

- v. That the O.C.S South B Police Station and or any other officer-in-charge acting under him/her do implement and/or ensure compliance or supervise the implementation of the orders.
  - vi. That the costs of this Application be borne by the Defendants.
2. The application is based on the grounds appearing on its face together with the supporting affidavit of Evance Mudanya Mugamba, sworn on even date.

### **The Applicants Case**

3. The deponent averred that they have maintained open, continuous and uninterrupted possession of land parcel L.R No. 209/10263, now known as Nairobi/Block 160/61 (hereinafter referred to as the suit property) since 2010. He acknowledged that the 1<sup>st</sup> Defendant is the registered proprietor of the suit property, while the 2<sup>nd</sup> Defendant claims beneficial ownership. He further averred that the 3<sup>rd</sup> Defendant purports to be the registered owner and that the 4<sup>th</sup> Defendant is her agent or representative. He argued that the 3<sup>rd</sup> Defendant's claim is not supported by documentation and that the entry registered on 28<sup>th</sup> June 2010 is fraudulent.
4. He stated that they took possession of the suit property in 2010 when it was unoccupied and in a dilapidated condition, with a large depression that they filled. They subsequently developed the land, planted trees, and transformed it into a parking yard for long-distance trucks. He argued that the Defendants, despite knowing of their occupation, neither demanded rent nor claimed any proprietary rights over the property for more than fourteen years. He further contended that no tenancy or contractual relationship was ever established.
5. The deponent asserts that the Defendants reappeared in April 2025 after the 3<sup>rd</sup> Defendant, through legal counsel, issued an eviction notice acknowledging the Plaintiffs' claim of adverse possession, followed by a final notice in May 2025 demanding vacant possession, which prompted the Plaintiffs to initiate legal proceedings to seek title by adverse possession.
6. He asserted that they had developed, maintained, and secured the property, including establishing boundary fencing and sustaining improvements that support their livelihood at their own expense. He argued that their occupation has been adverse to the interests of the Defendants, without payment of rent or licence fees, and with the Defendants' knowledge.
7. On that basis, he argued that they had acquired ownership of the suit property through adverse possession, having maintained exclusive, continuous and uninterrupted possession for over twelve years. The Plaintiffs are apprehensive that the Defendants will evict them, thereby threatening their accrued rights if the orders sought are not granted. Accordingly, they prayed for a declaration that they are the lawful owners of the suit property by virtue of adverse possession.

### **The Respondents' Case**

8. The Respondents filed a replying affidavit sworn by the 4<sup>th</sup> Respondent in opposition to the application. The deponent argued that the Applicants have approached the Court with unclean hands through material non-disclosure and misrepresentation.



9. He asserted that the Applicants improperly attached a copy of the title deed, which was actually part of the documents served on them together with the Final Notice to Vacate dated 26<sup>th</sup> May 2025. He described this conduct as fraudulent, an abuse of process, and a misapplication of documents, asserting that the Applicants had misleadingly presented documents served in support of their claim.
10. He further averred that he was appointed as a lawful donee under a Power of Attorney dated 21<sup>st</sup> May 2025 by Evangelina Nyawira Muriuki. He stated that he was introduced to other persons alleged to have a beneficial interest in the property arising from the estate of the late David Mukamiti Musonye.
11. He stated that during a site visit in April 2025, he found the property unlawfully occupied by the Applicants and others. Subsequently, a notice to vacate was initially issued, followed by a formal Final Notice to Vacate after the Applicants failed to vacate within the specified period.
12. He denied the Applicants' claims of prolonged occupation and development of the property, asserting that the land had remained unused and that the Plaintiffs' assertions are false.
13. On that basis, he asserted that the application is frivolous, vexatious, and an abuse of the Court process. He contended that the Applicants are unlawful occupiers attempting to acquire the property unlawfully through litigation. He maintained that the balance of convenience favours not maintaining the status quo pending the full hearing of the suit.

### **The Response**

14. The Plaintiff filed a further affidavit arguing that the Respondents misunderstood the application, which is based on a claim for adverse possession, and instead focused on issues regarding the notices to vacate. He also argued that the 4<sup>th</sup> Respondent lacks capacity to respond on behalf of the other Respondents.
15. It was argued that the Memorandum of Appearance filed by the Respondents is defective, as it appears to be signed by all Respondents, including the 1<sup>st</sup> Respondent, whom the 4<sup>th</sup> Respondent claims is deceased. He further stated that the 2<sup>nd</sup> Respondent, being a limited liability company, has not provided proper authorisation for its representation, while the 3<sup>rd</sup> Respondent relies on an unregistered Power of Attorney, which cannot legally confer authority upon the 4<sup>th</sup> Respondent. In light of the foregoing, he contended that the 4<sup>th</sup> Respondent's response is a nullity and that the summons remains effectively undefended.
16. The deponent challenged the Respondents' claims regarding ownership, arguing that no evidence has been presented to establish the 1<sup>st</sup> Respondent's death or to clarify the transfer of the property to the 3<sup>rd</sup> Respondent. He asserted that the alleged registration in favour of the 3<sup>rd</sup> Respondent is fraudulent and conflicts with succession law.
17. He further stated that the Respondents have not provided any valid reason for issuing the notices to vacate, as there has never been a tenancy or legal basis for their occupation.
18. He reiterated that the Plaintiffs have been in continuous and exclusive possession of the land for over twelve years, during which they have developed and utilized it for their livelihood.
19. On that basis, the Plaintiff claimed they had acquired ownership through adverse possession and urged the Court to allow the application as prayed.
20. The application was canvassed by way of written submissions.



## The Plaintiff's Submissions

21. The Plaintiffs filed their submissions dated 16<sup>th</sup> October 2025.
22. On behalf of the Plaintiffs, Counsel outlined the following issues for the Court's determination:
  - a) ) Whether the Respondents have properly entered appearance and are competent before this court;
  - b) Whether the Respondents' replying affidavit and grounds of opposition are valid in law; and
  - c) Whether the Plaintiffs/Applicants have satisfied the principles for the grant of a temporary injunction.
23. Regarding the first issue, Counsel submitted that the Respondents' appearance and response are legally incompetent and should be struck out. On legal capacity, Counsel relied on *Trouistik Union International & Another v Jane Mbeyu & Another* [1993] eKLR to argue that a deceased person lacks the capacity to sue or be sued, and any proceedings undertaken in such a name are null and void ab initio. Counsel argued that the Memorandum of Appearance dated 24<sup>th</sup> June 2025 is invalid, as it purported to bear the signature of the 1<sup>st</sup> Respondent despite allegations that he is deceased.
24. Regarding the Second Respondent, Counsel cited Order 9 Rule 2(c) of the Civil Procedure Rules and Section 3(1) of the *Companies Act* to assert that a company can only act through duly authorized agents. Counsel referenced the case of *Affordable Homes Africa Ltd v Ian Henderson & 2 Others* [2004] eKLR to emphasize that corporate actions must be supported by a proper resolution. It was argued that no such authorization was presented, thereby rendering the appearance defective.
25. Regarding the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, Counsel relied on *Omari v Nyambane* [1989] KLR 184 to argue that an unregistered Power of Attorney cannot confer legal authority. Counsel contended that the 4<sup>th</sup> Respondent, claiming to act as the donee under such a document, has no locus standi, and his pleadings are therefore a nullity.
26. Regarding the 1<sup>st</sup> Respondent, Counsel submitted that no death certificate was presented, and therefore, the Court cannot act on mere allegations. Counsel further argued that the registration of the 3<sup>rd</sup> Respondent as the proprietor of the suit property was fraudulent and contrary to the *Law of Succession Act* (Cap 160), as no grant of representation or succession process had been demonstrated. Counsel relied on *Esther Ndegi Njiru & Another v Leonard Gatei* [2014] eKLR to submit that transmission of property from a deceased person must comply with succession law, failing which the resulting title is impeachable.
27. Regarding the second issue, Counsel cited the principles established in *Giella v Cassman Brown & Co Ltd* [1973] EA 358, as reaffirmed in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR. It was submitted that the Plaintiffs have established a prima facie case as they have been in open, continuous and exclusive possession of the suit property for over twelve years, thereby establishing rights by adverse possession.
28. Counsel further cited *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR to argue that the Applicants face imminent eviction, which would result in irreparable harm that cannot be remedied by damages. It was contended that the balance of convenience favours maintaining the status quo until the case is fully resolved.
29. In conclusion, Counsel urged the Court to find that the Respondents' participation is legally defective and to allow the application as prayed.



### **The 4<sup>th</sup> Defendant's Submissions**

30. The Defendants filed their submissions dated 16<sup>th</sup> October 2025. The 4<sup>th</sup> Defendant submitted that his appearance is pursuant to a registered Power of Attorney donated by Evangelina Nyawira Muriuki.
31. He argued that the Applicants relied on a copy of the title deed previously served upon them as part of a Notice to Vacate, which they improperly presented as proof of ownership. Counsel contended that the application lacks credible evidence and is intended to delay justice and frustrate the Respondents' lawful rights.
32. He further submitted that the Applicants have failed to demonstrate continuous occupation through documentary evidence, such as payment of land rates or utility bills, and have therefore not substantiated their claim. It was argued that ownership of land can only be acquired through lawful processes, and not through an abusive invocation of the Court's jurisdiction.
33. Regarding the claim for adverse possession, the Defendant submitted that the Plaintiffs' case is legally untenable, as their assertion that they found the land unoccupied is inconsistent with a claim of adverse possession. The Defendant referenced Sections 7, 13 and 38 of the *Limitation of Actions Act*, along with the decision in *Wambugu v Njuguna* [1983] KLR 172, to argue that adverse possession must be demonstrated through open, continuous, exclusive, and adverse occupation for the statutory period. It was contended that the Applicants had failed to discharge this burden.
34. In conclusion, the Defendant urged the Court to find that the application lacks merit, is based on misrepresentation, and to dismiss it with costs.

### **Analysis And Determination**

35. Having considered the application, the respective affidavits and the rival submissions, the following issues arise for determination:
  - a. Whether the Respondents' response is admissible.
  - b. whether the Plaintiffs have satisfied the threshold for the grant of a temporary injunction.
36. Regarding the first issue, the Plaintiffs challenged the validity of the Respondents' response and the Memorandum of Appearance on several grounds. First, they contend that the 1<sup>st</sup> Respondent, whom the 4<sup>th</sup> Respondent alleges to be deceased, is indicated as having signed the Memorandum of Appearance. Second, they argue that the 2<sup>nd</sup> Respondent, being a limited liability company, has not demonstrated proper authorization for representation. Thirdly, they assert that the 4<sup>th</sup> Respondent purports to act under an unregistered Power of Attorney granted by the 3<sup>rd</sup> Respondent.
37. Regarding the 1<sup>st</sup> Respondent, the 4<sup>th</sup> Respondent stated that the 1<sup>st</sup> Respondent is deceased. Section 82(a) of the Succession Act confers power on personal representatives to institute a suit regarding the estate of the deceased and provides as follows:

“Personal representatives shall subject only to any limitation imposed by their grant have the following powers:

  - a) to enforce, by suit or otherwise all causes of action which by virtue of any law survive the deceased or arising out of his death for his personal representative.”



38. From the reading of the above provision, it is clear that the personal representative of the deceased shall be subject to any limitation imposed by the grant, enforceable by suit or otherwise, as to all causes of action which by virtue of any law survive the deceased or arise out of his death.
39. .
40. In *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKLR, the Court of Appeal held that only a duly appointed personal representative has the authority to institute or defend proceedings on behalf of a deceased person. Any proceedings initiated in the name of a deceased person, without substitution by a legal representative, are deemed incompetent.
41. Accordingly, any pleadings filed in the name of a deceased person shall be considered a nullity. However, this defect does not invalidate the entire Memorandum of Appearance and only affects the participation of the 1<sup>st</sup> Respondent. The appearance by, or on behalf of, the remaining Respondents remains valid and is not thereby rendered invalid.
42. Regarding the 2<sup>nd</sup> Respondent, the Plaintiffs argued that proper authorization for its representation has not been shown. In *Siokwei Tarita Ltd v Dr Charles Walekwa* [2012] KEHC 305 (KLR), it was established that issues related to a company's internal authorization procedures are internal matters and cannot be challenged by outsiders without evidence. It was held that:
- “The appropriate officer authorized to swear an affidavit on behalf of a Company is known internally to the company under its Articles of Association. If an Affidavit is sworn by a person who is not authorized by the Articles of Association of the company, then this is a matter that touches on a violation of the Articles of Association. To state that an affidavit by a corporation is not properly sworn is to say that the same is not in line with the company's Articles of Association, which is a complaint that can only be entertained by an insider and not by an outsider, for it is not the business of an outsider to assert that the internal affairs of the company have not been complied with.”
43. In the matter at hand, no evidence has been presented to show that the Memorandum of Appearance was not authorized in accordance with the 2<sup>nd</sup> Respondent's internal governance structures. The objection is therefore speculative and insufficient to invalidate the appearance.
44. The Plaintiffs further challenged the 4<sup>th</sup> Respondent's authority on the grounds that the Power of Attorney relied upon is unregistered. Although Section 4 of the *Registration of Documents Act* states that certain instruments affecting interests in land must be registered, the Power of Attorney in question does not, on its face, create, assign, or transfer any proprietary interest in the suit property, but merely authorizes the donee to act on behalf of the donor.
45. It therefore falls within the category of instruments that do not require mandatory registration under Section 4 of the *Registration of Documents Act*. In any event, the issue of whether the said instrument is sufficient to confer authority on the 4<sup>th</sup> Respondent is a matter that requires substantive interrogation and cannot be conclusively determined at this interlocutory stage.
46. In the absence of a formal application to strike out the Respondents' pleadings and evidence demonstrating that the 4<sup>th</sup> Respondent entirely lacks authority, this Court is not persuaded that the Respondents' response is rendered incompetent solely on that ground.
47. Top of Form
48. Bottom of Form



49. Regarding the second issue, the law governing interlocutory injunction is set out in Order 40 Rule 1 of the Civil Procedure Rules, 2010, which provides that:

Where in any suit it is proved by affidavit or otherwise–

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the if any decree that may be passed against the defendant in the suit,

The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

50. The principles applicable in an application for an injunction were established in the celebrated case of *Giella vs Cassman Brown & Co Ltd*, 1973 EA 358, as follows.

- a) First, the applicant must show a prima facie case with a probability of success.
- b) Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
- c) Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.

51. The first issue for determination is whether the Applicants have established a prima facie case with a probability of success.

52. A prima facie case was defined in *Mrao Ltd v First American Bank of Kenya and 2 others*, (2003) KLR 125 as follows: -

“ A Prima facie case in a civil application includes but 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 there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

53. The Plaintiffs’ claim of ownership is based on adverse possession. The Plaintiffs asserted that they have maintained open, continuous, exclusive, and uninterrupted possession of the land since 2010, during which they developed and utilized the land without the Defendants’ permission. In this regard, the Plaintiffs presented a copy of the title deed issued in the 1<sup>st</sup> Defendant’s name, an eviction notice dated 22<sup>nd</sup> April 2025, and a final notice to vacate issued on 26<sup>th</sup> May 2025.

54. Based on the evidence on record, the dispute between the parties concerns the ownership of the suit property. In *Edwin Kamau Muniu Vs Barclays Bank of Kenya Ltd* 2006), the Court held that;

“In an interlocutory application to determine the very issues which will be canvassed at the trial with finality, all the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”



55. At the interlocutory stage, the Court is not required to make definitive findings on the contested issues. The issue of ownership can only be determined at a full trial, where the parties will have the opportunity to call evidence and have it challenged through cross-examination.
56. Based on the evidence presented by the parties, I find that the Applicants have established a prima facie case with a probability of success.
57. The conditions set out in the Giella Vs Cassman Brown Case (Supra) are to be considered sequentially. However, considering the nature of the dispute, the Court finds it necessary to address them.
58. Regarding irreparable harm, the Plaintiffs argued that they face imminent eviction and are currently using the suit property as a parking yard for long-distance trucks. The Plaintiffs are apprehensive that, if they are evicted, the resulting loss cannot be adequately compensated by damages.
59. The Plaintiffs produced eviction notices to support their claim of possession of the suit property and indicate an imminent intention by the Defendants to evict them.
60. In light of the foregoing, I find that eviction at this interlocutory stage would alter the factual substratum of the dispute and may render the suit nugatory by disrupting the very possession upon which the claim for adverse possession is founded. In that regard, the harm likely to be occasioned cannot be adequately addressed by an award of damages.
61. Given the circumstances, and notwithstanding the Plaintiffs' failure to establish a prima facie case, this Court is convinced that the interests of justice warrant maintaining the status quo pending the hearing and determination of this case.
62. In the end, the application dated 19<sup>th</sup> June 2025 is hereby determined as follows:
  - a. The status quo shall be maintained pending the hearing and determination of the suit.
  - b. Each party shall bear the costs of the application.

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 27<sup>TH</sup> DAY OF APRIL 2026.**

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**HON. T. MURIGI**  
**JUDGE**

In The Presence Of:

The 4<sup>th</sup> Defendant

Ahmed- Court assistant

Mention on 11<sup>th</sup> June 2026 for directions

