

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC 155 OF 2025

BLANDINA GHAMAGHANA MALIMU
PLAINTIFF

VERSUS

**JOHN CHARO MWARO (SUED AS ADMINISTRATOR
OF THE ESTATE OF THE LATE SIMON KAFADZI MWARO
ALIAS SIMON MWARO) & ANOR**
DEFENDANTS

RULING

1. The notice of motion dated 24th November 2025 seeks an order of temporary injunction to restrain the defendants from interfering with the suit land being **Kilifi/Ngerenyi/303** (hereinafter also referred to as “the *suit land*”) pending the hearing of the suit.
2. The defendants filed their response through the replying affidavit of John Charo Mwaro, the first defendant, dated 14th January 2026, stating as follows: Simon Kafazi Mwaro, who died intestate, is the registered owner of the suit land, the purported sale referred to by the plaintiff was cancelled and declared null and void in ***Malindi High Court Succession Cause Number 115 Of 2022***, and the plaintiff has no proprietary interest in the suit property or any part thereof; that the plaintiff was also party to ***Malindi El C Case Number 27 Of 2018 John Charo Mwaro And Dixon Kazungu Yaa Versus Emmanuel Katana Charo And Others*** where the court declared the sales made to the plaintiff by one Dama as irregular fraud during null and void. The judgment in ***Malindi ELC Case Number 27 Of 2018*** was upheld by the Court of Appeal on 24th October 2025 in a judgment in ***Malindi Civil Appeal Number***

E040 Of 2023 Emmanuel Katana Charo and Others Versus John Charo Mwaro and Others. Consequently, says the defendant, any purported developments on the suit property by the plaintiff are illegal; that the plaintiff does not fit the description of an innocent purchaser for value without notice. It is also argued that this court lacks jurisdiction to entertain the application and the entire suit since the matter is *res judicata* the two previous suits, and that it is an abuse of the court process. Finally, the deponent states that the plaintiff has come to court with unclean hands as she has allegedly withheld material information in order to misinform and mislead the court.

3. In her supplementary affidavit dated 4th February 2026, the plaintiff denied having misled the court, and stated that she had furnished the court with the correct information.
4. In her replying affidavit ostensibly in opposition to the Notice of Preliminary Objection dated 14th January 2026 raising the issue of *Res Judicata*, the plaintiff stated that the issues raised in the present suit were never heard and finally determined on merit by any court of competent jurisdiction; that the previous proceedings mentioned by the defendants did not involve the same issues, directly or substantially, as the issues here in. However, the plaintiff added that she has proprietary interest in the suit land *because* she purchased and developed the same and that she is an innocent purchaser thereof. She also stated that the issues raised in the Preliminary

Objection require the court to ascertain facts and evidence and therefore do not meet the threshold of a pure point of law.

ANALYSIS AND DETERMINATION

5. The plaintiff's claim is that despite the revocation of grant of letters of administration issued to Dama Simon Mwaro (the former administrator of the Estate of Simon Kafadzi Mwaro), the said Dama, notwithstanding her demise, still retains a beneficial interest and is entitled to a share in the estate of the late Simon Kafadzi Mwaro; that the plaintiff has extensively developed the land that she purchased from Dama; that the defendants, as current administrators of the estate, are legally obligated to honour the lawful transactions entered into by Dama owing to the latter's still existing interest in the land; that the defendants' actions as administrators are now creating a cloud of uncertainty over Dama's interest in the suit land; that the defendants' failure or refusal to recognize the plaintiff's interest constitutes a breach of their fiduciary duty and has occasioned to the plaintiff immense loss and damage.
6. This court notes that the plaintiff is asking that there be a temporary injunction restraining the defendants from interfering with the portion of land that she occupies and which she alleged to have developed extensively. There is a conflict as to whether the present matter is *res judicata* or not, which cannot be determined in the present ruling but only in the main hearing.

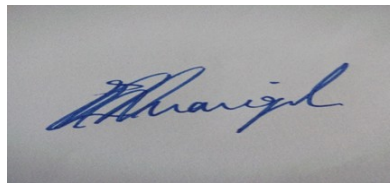
7. The plaintiff's claim is that despite the revocation of the grant of letters of administration issued to Dama Simon Mwaro, (the former administrator of the state of Simon Kafadzi Mwaro), she still retains a beneficial interest and is entitled to a share invested of the late Simon Mwaro. It is true that Dama was widow to Simon Mwaro and the valid triable issue therefore arises as to whether she had an interest which she could sell on her own behalf to the plaintiff. I find that by that single issue; the plaintiff has raised a *prima facie* case for the consideration of this court.
8. As for whether the plaintiff would suffer loss and damage if they order sought were not granted, this court is of the view is that she would. She is in occupation of the suit premises and she has ably demonstrated by evidence in the supporting affidavit that she has extensively developed the suit property such that it has increased in value since her purchase.
9. The view of this court is that the applicant has satisfied the two main limbs of the test for the grant of an interim injunction set out in ***Giella Vs Cassman Brown 1973 EA 358***. Consequently, I find that the application dated 24th of November 2025 has merit and it is hereby granted in terms of **prayer no. 3**.
10. The plaintiff shall ensure that she has filed and served her trial bundle within **14** days from today and the defendants shall file and serve their trial bundle or bundles within **14** days from the date of service of the plaintiff's bundle upon them, or in any event within 14

days after the expiry of the **14** days granted to the plaintiff for the same purpose.

11. The matter will be mentioned on **15th June 2026** for pretrial.
12. The costs of the present application shall be costs in the main suit.

Dated, signed and delivered at Malindi on this 21st Day of April, 2026.

**MWANGI
JUDGE, ELC,**

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'Mwangi'.

**NJOROGE,
MALINDI.**