



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. E414 OF 2025

**JAMES NJENGA THINDIU
PLAINTIFF**

VERSUS

**LUCAS MIRERA MISENTE1ST
DEFENDANT**

**EMBAKASI RANCHING COMPANY.....2ND
DEFENDANT**

**LUCY NYOKABI MATHENGE.....3RD
DEFENDANT**

**WALTER KIGERA.....4TH
DEFENDANT**

**CHIEF LAND REGISTRAR 5TH
DEFENDANT**

RULING

1. By a Notice of Motion dated 8th August 2025, brought under Section 10(4) of the High Court (Organization and Administration) Act, Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 40 Rules 1(a), 2, and 4(1), and Order 51 Rule 1 of the Civil Procedure Rules, the Plaintiff/Applicant seeks the following orders:

- a. Spent.**
- b. Spent.**
- c. THAT this Honourable Court be pleased to grant a temporary injunction restraining the 1st Respondent either by himself, his agents, assigns, representatives, employees or any other person acting under his authority or in collusion with the 2nd, 3rd, 4th, and 5th Respondents or otherwise howsoever from disposing of, alienating, encumbering, charging, interfering with, transferring and/or in any manner dealing with or in all that property known as Land Reference Number. Nairobi/Block 105/13704 pending hearing and determination of this suit.**
- d. THAT this Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.**
- e. THAT the costs of this application be provided for.**
2. The application is based on the grounds appearing on its face together with the supporting affidavit of James Njenga Thindiu, sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that he is a shareholder of the 2nd Defendant, having purchased a share around 1972, and was subsequently issued Share Certificate No. 8111 on 3rd December 1978.

4. He asserted that the 2nd Defendant later acquired L.R. No. 10904/2, approximately 2,024 hectares, which was subsequently subdivided and allocated to its shareholders. He stated that on 28th November 1983, he was allocated Plot No. C28, now known as Nairobi/Block 105/13704, measuring approximately 0.16 hectares. He also stated that he paid the required allocation fees and other charges demanded by the 2nd Defendant on various occasions.
5. He stated that in August 2011, he took possession of the land after the 2nd Defendant's surveyor identified the beacons marking the suit property. He subsequently paid additional fees in February 2013 for beacon re-establishment, after which the 2nd Defendant confirmed that Plot No. C28 corresponds with parcel Nairobi/Block 105/13704.
6. He further stated that he continued to follow up with the 2nd Defendant and the Land Registry regarding the issuance of a title in his name, and that he paid additional processing fees in November 2018. He asserted that although the 2nd Defendant and officials from the relevant authorities confirmed through correspondence in 2019 and 2023 that he was the owner of the suit property, he later discovered in November 2023 that the property had been registered in the 1st Defendant's name and a lease certificate had been issued on 28th March 2019.
7. He stated that the 2nd Defendant acknowledged that the 1st Defendant's Lease Certificate might have been issued

erroneously and assured him that the issue would be rectified, but no corrective action has been taken. He maintains that he is the rightful owner of the suit property. He argued that unless an injunction is granted, the property could be unlawfully disposed of to third parties, causing him irreparable loss. In conclusion, he urged the Court to allow the application as prayed.

THE 1ST DEFENDANT'S CASE

8. The 1st Defendant filed a Replying Affidavit in opposition to the application. He stated that on 17th May 2016, he entered into a sale agreement with Eliud Njagi Mutahi and Josephat Njagi Mutahi, the owners of Plot No. V. 15307, for a consideration of Kshs. 1,000,000/= . He averred that, prior to executing the agreement, he conducted due diligence, including visiting the 2nd Defendant's offices, where the vendors' ownership documents were verified and confirmed as genuine.
9. He further averred that, following advice from the 2nd Defendant, he paid fees for a site visit which was carried out by the company's surveyor, during which the plot was physically identified in the presence of the vendors. Subsequently, he paid the purchase price in instalments, and a formal transfer of the plot was executed at the 2nd Defendant's offices in the presence of the relevant parties. After paying the necessary transfer fees, the 2nd Defendant

issued him transfer documents, a certificate of plot ownership, and, later, Share Certificate No. NMC 033266.

10. He asserted that he had maintained continuous possession of the property since May 2016, during which he built a site house, a perimeter wall, a pit latrine, and five rental units that are currently occupied by tenants. He stated that when the Plaintiff claimed ownership of the suit property in 2019, the matter was reported to investigative authorities and a site visit was organized by the 2nd Defendant, which the Plaintiff failed to attend.
11. He stated that his ownership documents were later verified by the 2nd Defendant and the Chief Land Registrar, following which a Lease Certificate was issued in his name. He denied acquiring the property fraudulently and maintained that he is a bona fide purchaser for value without notice.
12. He further stated that the Plaintiff was previously allocated an alternative plot by the 2nd Defendant, thereby relinquishing any claim to the suit property. He argued that the Plaintiff's allegations were unfounded and aimed to dispossess him of property which he had lawfully acquired and developed. Accordingly, he urged the Court to dismiss the application with costs.
13. The 1st Defendant also filed an affidavit sworn by Josphat Mwangi Mutahi in support of his case. The deponent stated that he is the father of Eliud Njagi Mutahi, the original

allottee of Plot No. V. 15307 (Type 8/9425/106), the suit property herein.

14. He further stated that in 2013, his son applied to the 2nd Defendant for a plot and was subsequently allocated one after paying the allocation fee of Kshs. 108,000/= on 1st August 2013. A certificate of ownership No. NMC 02706B was issued in his son's name. He then took possession of the plot until 2016, when he sold it to the 1st Defendant.
15. He further stated that the 1st Defendant executed a sale agreement dated 17th May 2016, in which the plot was sold to him for Kshs. 1,000,000/= after the 2nd Defendant verified the ownership documents, and a site visit confirmed the location of the property. Subsequently, following the payment, the parties proceeded to the offices of the 2nd Defendant, where the 1st Defendant paid the transfer fees and was issued a new certificate in his name.
16. He stated that the 1st Defendant later took possession of the plot in 2017, built structures and a perimeter wall, and has been openly occupying the property ever since. He further stated that disputes arose when the Plaintiff claimed ownership of the property, leading to police reports and meetings convened by the 2nd Defendant, during which the 1st Defendant's documents were examined and verified as genuine.

THE RESPONSE

17. In a further affidavit dated 24th October 2025, the Plaintiff averred that the 1st Defendant's affidavit, sworn before a Notary Public in Ontario, Canada, a non-Commonwealth, was fatally defective due to its failure to authenticate the notarial act with an affidavit or a Certificate of Notarization. He argued that this defect cannot be cured under Article 159(2)(d) of the Constitution, and therefore, the affidavit should be struck out.
18. Without prejudice to that objection, the Plaintiff reiterated that the suit property, arose from the subdivision of L.R. No. 10904/2Plot No. which was owned and allocated to bona fide shareholders of the 2nd Defendant. He maintained that neither the 1st Defendant nor the alleged vendors have produced any evidence of membership or shareholding in the 2nd Defendant company.
19. He explained that Plot No. V15307 corresponded on the ground with the suit property allocated to him in 1983. Accordingly, he argued that the alleged vendors had no lawful interest capable of being transferred to the 1st Defendant, since the property had already been allocated to him and was not available for reallocation or sale.
20. He disputed the 1st Defendant's claim that due diligence was carried out regarding the alleged purchase, arguing that the documents relied upon by the 1st Defendant could not establish ownership. He emphasized that he had made all the necessary payments to the 2nd Defendant over the years

for the property, which predates the transaction relied upon by the 1st Defendant.

21. He denied the 1st Defendant's claim that he had owned the property since 2016, asserting that the alleged developments on the suit property were recent and unlawful. He also denied the claims that he had issued threats, refused to attend site visits, or acknowledged the allocation of an alternative plot. He maintained that the Certificate of Lease issued to the 1st Defendant was obtained fraudulently, as the property had already been allocated to him as the original shareholder of the 2nd Defendant.
22. He challenged the credibility of the affidavit sworn by Josphat Mwangi, arguing that the alleged allocation of the property to his son in 2013 was fraudulent and could not confer any rights because the land had already been allocated to him many decades earlier. He asserted that he remains the lawful allottee and owner of the suit property and that any purported allocation or transfer to the 1st Defendant is unlawful and fraudulent.
23. The Plaintiff also filed a Supplementary Affidavit sworn by Evans Peter Thindiu on 27th October 2025 in support of his case. The deponent averred that he is the Plaintiff's eldest son. He further averred that on 26th October 2025, he visited the suit property to verify the alleged developments carried out by the 1st Defendant and found that the perimeter walls surrounding the suit property were erected by neighbouring landowners to secure their respective parcels, rather than by

the 1st Defendant. He further stated that there were no rental units on the property but only three unfinished rooms remained under construction.

24. The deponent further stated that the photographs produced by the 1st Defendant, purportedly showing rental units on the suit property, were in fact images of developments on a neighbouring plot and were meant to mislead the Court. He also pointed out that the 1st Defendant had not provided any lease agreements or other evidence to support the claim that tenants occupied the property.

25. In light of the foregoing, he urged the Court to restrain the 1st Defendant from carrying out any further developments or transactions related to the property until the ownership dispute is resolved.

26. The application was canvassed by way of written submissions

THE PLAINTIFF'S SUBMISSIONS

27. The Plaintiff filed his submissions dated 27th October 2025.

28. On behalf of the Plaintiff, Counsel submitted that the replying affidavit sworn by the 1st Defendant is incurably defective as it was sworn before a Notary Public in Canada without the necessary authentication. It was submitted that under Section 88 of the Evidence Act, documents notarized outside Commonwealth jurisdictions require proper authentication, and therefore, the impugned affidavit should

be struck out. To support this argument, Counsel relied on **Peeraj General Trading & Contracting Company Limited, Kenya & another v Mumia Sugar Company Limited [2016] eKLR** and **HCCOMM 536 of 2008; Nokia Corporation v Musimba Investment Ltd.**

29. Counsel further submitted that the Plaintiff has established a prima facie case with a probability of success. Counsel argued that the Plaintiff was a shareholder of the 2nd Defendant, having purchased a share in 1972 and was subsequently issued with Share Certificate No. 8112 in 1978. Counsel submitted that following the subdivision of L.R. No. 10904/2, the Plaintiff was allocated Plot No. C28, now known as Nairobi/Block 105/13704, on 28th November 1983. Counsel further submitted that the Plaintiff paid the requisite fees and that the plot was duly identified and beacons by the 2nd Defendant's surveyors, thereby confirming his beneficial ownership of the suit property. To support this point, Counsel relied on **Suleiman -vs- Amboseli Resort Limited [2004] 2 KLR 589, Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR**, and **Simon Mulongo Sikuku & another v Munyang'oli Mbuya Wewela [2013] KEHC 805 (KLR)**.

30. It was further submitted that the 2nd Defendant and other relevant authorities had on several occasions confirmed that the Plaintiff was the rightful owner of the suit property. Counsel argued that the Lease Certificate issued in favour of the 1st Defendant was obtained fraudulently since

the suit property had already been allocated to the Plaintiff and was not available for reallocation. To support this argument, reliance was placed on **Muchira v Njonge & another (Environment and Land Appeal E020 of 2023) [2025] KEELC 1171 (KLR)**; **Richard Kipkemei Limo v Hassan Kipkemboi Ngeny & 4 others [2019] KECA 456 (KLR)**, and **Eunice Wairimu Kuria v Norman Mutuota & 2 others [2020] KEELC 3642 (KLR)**, which established that where land is allocated twice, the first allotment prevails unless the earlier allocation has been lawfully revoked.

31. It was submitted that the title held by the 1st Defendant was issued unlawfully and cannot confer any rights since the Plaintiff is the lawful owner of the Suit Property. To support this point, Counsel relied on **Munyu Maina v Hiram Gathiha Maina [2013] eKLR** and **Dina Management Limited v County Government of Mombasa & 5 Others [2023] KESC 30 (KLR)**:

32. Regarding irreparable harm, Counsel submitted that the 1st Defendant has already begun developments on the suit property and may dispose of or further develop it, to the detriment of the Plaintiff. It was argued that such actions would alter the character of the property and undermine the Plaintiff's proprietary rights. Counsel asserted that the harm likely to be suffered by the Plaintiff cannot be remedied by an award of damages. To support this argument, reference was made to **Kabochi v Garero & 2 others [2024] KEELC 5620 (KLR)**, **Mwamadzenzo & another v Mwalimu & 10**

others [2022] KEELC 14586 (KLR), Kenya Farmers' Association Limited v National Land Commission & 2 others [2023] KEELC 21503 (KLR) and Kishasha (Suing as the legal and personal representative of the Estate of Samuel Kiyaya Muhenge - Deceased) v Kihyahya & 6 others [2022] KEELC 1095 (KLR).

33. Counsel submitted that the balance of convenience favours preserving the suit property until the dispute is heard and determined. Counsel argued that the 1st Defendant would not be prejudiced if an injunction is granted, whereas failing to do so would expose the Plaintiff to irreparable loss and the risk of multiple proceedings. To support this argument, reliance was placed on **Amir Suleiman v Amboseli Resort Limited [2004] eKLR.**

34. Based on the foregoing, Counsel urged the Court to allow the application with costs to the Plaintiff.

THE 1ST DEFENDANT'S SUBMISSIONS

35. The 1st Defendant filed his submissions dated 5th November 2025.

36. On his behalf, Counsel submitted that the 1st Defendant is the registered proprietor of Title No. Nairobi/Block 105/13704, having purchased it on 17th May 2016 from Eliud Njagi Mutahi and Josphat Njagi Mutahi for a consideration of Kshs. 1,000,000/=.

37. Regarding the objection raised against the 1st Defendant's Replying Affidavit, Counsel submitted that the

affidavit was sworn before a Notary Public in Canada, a Commonwealth country. It was argued that the Plaintiff's objection to the affidavit was therefore unfounded as documents notarized within Commonwealth jurisdictions are admissible in Kenyan Courts without the need for additional authentication.

38. Counsel contended that the Plaintiff did not satisfy the conditions for the grant of a temporary injunction. To support this point, reliance was placed on **Giella v Cassman Brown & Company Ltd [1973] E.A. 358; Nguruman Ltd v Jan Bonde Nielsen & 2 others [2014] eKLR; Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR and Habib Bank Ag Zurich v Eugene Marion & Yakub CA No. 43 of 1983 [unreported].**

39. Counsel submitted that the Plaintiff had failed to establish a prima facie case, noting that the 1st Defendant had presented documents culminating in the issuance of the lease certificate while the Plaintiff had not produced a title to the suit property. It was argued that the Plaintiff did not demonstrate any fraud on the part of the 1st Defendant, noting that allegations of fraud must be strictly proved.

40. Regarding irreparable injury, Counsel submitted that the Plaintiff failed to demonstrate that he would suffer irreparable harm if the injunction is not granted, given that the 1st Defendant was already in occupation of the property and had undertaken developments thereon. Counsel contended that the balance of convenience favoured the 1st

Defendant, who had been in possession of the property since 2016 and had carried out developments.

- 41.** Counsel submitted that the 1st Defendant is a bona fide purchaser for value without notice, having undertaken due diligence prior to the purchase and obtained the title lawfully. To support this point, reliance was placed on **Katende v Haridar & Co. Ltd [2008] 2 E.A, Vijay Morjaria v Nansingh Madhsingh Darbar & Another [2000] eKLR, and Munyua v Kiamenyi [2014] eKLR.**

ANALYSIS AND DETERMINATION

42. Having considered the application, the respective affidavits and the rival submissions, the following issues arise for the determination:
- a. Whether the 1st Defendant's replying affidavit is admissible; and*
 - b. Whether the Plaintiff has met the threshold for the grant of a temporary injunction.*
43. Regarding the first issue, the Plaintiff argued that the 1st Defendant's Replying Affidavit was inadmissible because it was sworn before a Notary Public in Ontario, Canada, but was not accompanied by a certificate of notarization or other proof of the notarial act.
44. Section 88 of the Evidence Act states that when a document is tendered before a Court and claims to be a document that, under the law applicable in England, would be admissible as proof of any fact without the need for proof

of the seal, stamp, or signature authenticating it, the court shall presume such seal, stamp, or signature to be genuine. The document shall then be admissible for the same purpose as it would be in England.

45. In **Microsoft Corporation vs. Mitsumi Computer Garage Ltd & Another Nairobi [2001] KLR 470; [2001] 2 EA 460**, the Court held that under Section 88 of the Evidence Act, Kenyan courts may admit affidavits taken in Commonwealth countries without requiring proof of the seal or official character of the person before whom the affidavit was sworn. It was held that:

“However, section 88 of the Evidence Act, Cap 80 of the Laws of Kenya, does seem to allow for the admissibility in Kenya Courts of documents which would be admissible in any Court of Justice in England under the law in force for the time being in England. In that respect, it is observed that in England, an affidavit taken in a commonwealth country is admissible in the Courts of Judicature without proof of the seal or signature of the person taking the affidavit (see Order 41 Rule 12 of the Rules of the Supreme Court in the Supreme Court Practice, 1999 Edition). From the foregoing, it follows that Kenyan Courts can admit affidavits taken in England, which is a commonwealth country.”

46. This position was reaffirmed in **Peeraj General Trading & Contracting Company Limited, Kenya & another v Mumias Sugar Company Limited [2016] KEHC 8119 (KLR)**, where the Court held that:

“Indeed, Section 88 of the Evidence Act, Cap 80 of the Laws of Kenya, provides that documents which would be admissible in the English Courts of Justice are admissible in Kenyan Courts without proof of the seal or stamp or signature authenticating it or of the judicial or official character claimed by the person by whom it purports to be signed. In England, by virtue of Order 41, Rule 12 of the Rules of the Supreme Court, affidavits taken in Commonwealth countries are admissible in evidence without proof of the stamp, seal or the official position of the person taking the affidavit. The same position obtains in Kenya.”

47. In the matter at hand, the affidavit was notarized in Canada, a Commonwealth country. In light of Section 88 of the Evidence Act and the authorities cited above, I find that no further authentication was required. The Plaintiff’s objection is, therefore, without merit and is dismissed.

48. Regarding the second issue, the law governing applications for injunctions is 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.”

The principles applicable in an application for an injunction were established in the celebrated case of **Giella v 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.

49. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success. A prima facie case was defined in **Mrao Ltd v First American Bank of Kenya and 2 others, (2003) KLR 125** as:

"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 there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter".

50. The Plaintiff asserts that he became a shareholder of the 2nd Defendant in 1972, was issued a share certificate on 3rd December 1978, and later allocated Plot No. C28 on 28th November 1983. He produced various documents, including a share certificate, a provisional letter of allocation, receipts for payments made over time, and correspondence from the 2nd Defendant and public offices confirming that Plot No. C28,

now known as Nairobi/Block 105/13704, belongs to him. He also relied on correspondence indicating that, although a Certificate of Lease was ultimately issued in favour of the 1st Defendant, the records of the 2nd Defendant recognized him as the allottee of the suit property.

51. The 1st Defendant, on his part, asserts that he lawfully purchased the property in 2016 from the owners of Plot No. V15307. In this regard, he produced a sale agreement, ownership documents, receipts, correspondence from the 2nd Defendant, and a Certificate of Lease issued in his name.

52. He stated that he conducted due diligence at the offices of the 2nd Defendant, where he obtained ownership documents and was subsequently registered as the proprietor of the suit property.

53. The dispute between the parties concerns the ownership of the suit property. In the case of **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.”

54. At the interlocutory stage, the Court is not required to make definitive findings on the contested issues. The issues of ownership and the legality of the title currently held by

the 1st Defendant 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.

55. Based on the evidence presented by the parties, I find that the Plaintiff has established a prima facie case with a probability of success.

56. On irreparable harm, the Applicant must demonstrate that it is a harm that cannot be adequately compensated by an award of damages. In **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal held that:

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be remedied by damages in the absence of an injunction, is a threshold requirement, and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is, injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award

of damages. An injury is irreparable where there is no standard by which its amount can be measured with reasonable accuracy, or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be an adequate remedy.”

57. The Plaintiff is apprehensive that the 1st Defendant may alienate, or otherwise deal with the suit property if an injunction is not granted, which could complicate the dispute and potentially introduce third-party interests.

58. The 1st Defendant argued that he is in possession of the suit property and that any loss suffered by the Plaintiff can be compensated by damages. The dispute between the parties relates to the validity of competing claims to the suit property and the risk of further dealings with the title pending trial. Such prejudice may not be adequately redressed by an award of damages.

59. Furthermore, the evidence shows that developments are ongoing on the suit property. If the property is further alienated or significantly altered before the trial, the Plaintiff's claim may be prejudiced. Based on the foregoing, I find that the Plaintiff has demonstrated that he will suffer irreparable loss if an injunction is not granted.

60. On balance of convenience, the Court has to weigh the hardship to be borne by the Applicant by refusing to grant the injunction, against the hardship to be borne by the Respondents by granting the injunction. Based on the

evidence presented by the parties, I find that the balance of convenience favours maintaining the status quo pending the hearing and determination of the suit.

61. In light of the foregoing, this Court is satisfied that the Plaintiff has met the threshold for granting interlocutory relief.

62. The upshot of the foregoing is that the application dated 8th August 2025 is allowed in the following terms:

a. A temporary injunction is hereby issued restraining the 1st Defendant either by himself, his agents, assigns, representatives, employees or any other person acting under his authority or in collusion with the 2nd, 3rd, 4th, and 5th Defendants or otherwise howsoever from disposing of, alienating, encumbering, charging, interfering with, transferring and/or in any manner dealing with or in all that property known as Land Reference Number. Nairobi/Block 105/13704 pending hearing and determination of this suit.

b. Costs of this application shall be borne by the 1st Defendant

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 23RD DAY OF APRIL 2026.

**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF:

Githua holding brief for Ms Jalenga for the Plaintiff

Mogire for the 1st Defendant.

Ahmed- Court assistant

ORIGINAL