

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCLOS NO. E002 OF 2026

FREDERICK NGALA HINZANO
PETITIONER

VERSUS

DOROTHY MAJALIWA TALIA & 6 OTHERS
RESPONDENTS

RULING

- 1.** The plaintiff's application dated **14/1/2026** seeks a temporary injunction to restrain any interference by the defendants with a portion of **Gede/Dabaso/178** measuring **1.65 acres** ha. Which the plaintiff claims to have been in occupation of since **2006** and which he has sought to have himself declared as entitled to by way of adverse possession in the Originating Summons of the same date.
- 2.** The plaintiff states that he has used the land since the year 2006 when he used the same as a parking space for his lorries. In the year 2013 he opened a club business by the name Club Santana on the same premises. He had to secure, which he did, the approval of the Municipal Council of Malindi to build the club. The Town Engineer approved the club's development plans. He has been renewing the business permits for the business since it opened its doors to clientele. The development of the club is for his own benefit and that of his family. He has a restaurant on the suit premises. He has never been accused of trespassing on the suit property. He states that the suit property is registered in the names of the 1st -5th

defendants. He is only claiming the portion of the suit land being 1.65 acres out of the entire 5 acres comprised of the title to Gede/Dabaso/178. That portion accommodates his developments. He has no interest in the rest of the land.

The Response of the 1st -5th Defendants

3. The 1st – 5th defendants filed their replying affidavit sworn by the 4th defendant on their behalf. The deponent states that some of the matters the plaintiff now brings up, such as lorry parking space, were not part of a previous suit that he had filed, being *MCELC No 30 Of 2023-Malindi*. The deponent claims to co-own the club with the plaintiff while she and her siblings co-own the land it is situated on. He accuses the plaintiff of forgery. She also states that he was charged with forcible detainer and convicted.

The Plaintiff's Further Affidavit Dated 20th January 2026.

4. In his further affidavit, the plaintiff claims that he was given the wrong legal advice in filing the previous case. He admits a relationship between himself and the 4th defendant and that they have a son together. He however denies that the relationship should be construed as a business partnership. He denies that there was any financial contribution by the 4th defendant towards the establishment of the business and points out that no receipts have been exhibited by the 4th defendant to prove the contribution. He states that the 4th defendant and her siblings have been aware of his occupation and use of the suit premises. He states that the facts in the former case alluded to by the 4th defendant were not in

respect of the doctrine of adverse possession but on matrimonial property and further states that his present claim is valid.

Analysis and determination.

5. I have considered the application and the replying affidavit of the 1st -5th defendants sworn by the 4th defendant on their behalf, and the further affidavit of the plaintiff as well as the filed submissions of the parties.
6. This court perceives from the evidence that has been adduced by affidavit that the defendants do not deny that the plaintiff is in occupation of the suit land and has been in such occupation for some years.
7. A claim for adverse possession is based on evidence of occupation of land under certain conditions. Those conditions can not be determined by the affidavit evidence in this case and the suit has to be heard in full in order for the court to determine whether the plaintiff's claim has any merit.
8. For now, the most vital thing that will balance the rights of the parties is to preserve the existing *status quo* pending the hearing and the determination of the Originating Summons. To avoid preempting any pleading or conclusion, this court finds it prudent not to comment on anything more than that there is evidence of possession.

9. The plaintiff has thus established a *prima facie* case. He also has a running business which would suffer untold losses if the same were to be interfered with at the moment before the rights of all the parties have been finally determined in the present suit. As such no action that should prejudice that business ought to take place until the finalization of the present suit. The conditions precedent for the grant of an order of interim injunction as set out in the case of *Giella Vs Cassman Brown 1973 EA 358* have thus been established by the plaintiff. The substantive matters that the plaintiff and the defendants are raising in their reply should be brought up at the main hearing of the Originating Summons for the court's assessment as to their veracity.

10. **Prayer no (c)** in the application can achieve the desired effect of preservation of the subject matter.

11. This court thus concludes that the suit land ought to be preserved so as to pave way for the hearing of the dispute on the merits. The upshot of the foregoing is that the application dated 14/1/2026 succeeds and I grant the following final orders:

a. The application dated 14/1/2026 has merit and I grant it in terms of prayer no (c) thereof;

b. The costs of the application shall be in the cause;

c. All the defendants shall ensure that they file their responses to the Originating Summons within 14 days from today;

- d. The plaintiff shall file and serve a Supplementary Affidavit within 14 days upon service of the defendants' responses if any shall be required;***
- e. The matter shall be listed for directions as to hearing on 19th June 2026.***

Dated, signed and issued at Malindi on this 14th May 2026.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE
JUDGE, ELC MALINDI.**