

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**FAMILY APPEAL NO. E010 OF 2025**  
**IN THE MATTER OF THE ESTATE OF KABURU MUGIRA alias**  
**KABURU M'MUGIRA (DECEASED)**

**ISAAC MURIUNGI KABURU.....1<sup>ST</sup>**  
**APPELLANT**

**FREDRICK MUTHAURA**  
**KABURU.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**DAVID KAGIRI**  
**MUGIRA.....RESPONDENT**

**RULING**

1. For determination is the Notice of Motion dated 16/6/2025,  
under **Sections 1A, 1B, 3, 3A of the Civil Procedure Act**  
**and Order 51 Rule 1 of Civil Procedure Rules, 2010,**  
seeking that:

**1. Spent.**

**2. The Appellants/Respondents themselves, their  
servants and or agents be permanently  
restrained from entering or in any way  
interfering with the respondent/applicant's**

**parcels of land known as ABOGETA/NKACHIE 1680, 2150, 2151, 2152, 2153 and 476.**

**3. This Honourable court be pleased to issue an order for the executive officer/Deputy Registrar of this court, to sign all the**

**relevant documents/instrument to effect transfer of land parcels ABOGETA/NKACHIE 1680, 2150, 2151, 2152, 2153 and 476 and all resultant titles to the applicant/respondent DAVID KABURU MUGIRA herein as per the judgment that was delivered on 28<sup>th</sup> November 2019.**

**4. This Honourable Court be pleased to issue an order directing the Chief Land Registrar to place a restriction on Title Number ABOGETA/NKACHIE/1680, 2150, 2151, 2152 and 476 restraining any dealings including transfer, charge, lease, or subdivision pending the hearing and determination of this appeal.**

**5. The process of obtaining the impugned grant and having it confirmed in favour of the Respondents/appellants was marred in fraud and procedural irregularities.**

**6. The honorable court be pleased to order that the impugned grant of letters of administration together with the impugned certificate of confirmation of grant stand revoked forthwith.**

**7. Further, all the transactions undertaken on the strength of the revoked grant and certificate of confirmation of grant be declared invalid, null and void “ab initio” with the ownership of the entire estate property being Land Parcel No ABOGETA/NKACHIE 1680, 2150, 2151, 2152, 2153 and 476 reverting to and in the name of the applicant herein.**

2. The application is premised on the grounds that the court found that the suit land, L.R No. Abogeta/Nkachie/210, which has subsequently been subdivided to L.R Nos. Abogeta/Nkachie 1680, 2150, 2151, 2152, 2153 and 476 did not form part of the estate of the Appellants’ deceased father. The Grant of Letters of Administration issued to the Appellants, wherein the suit land had been fraudulently included, was revoked. The Appellants preferred this appeal

and are now attempting to deal with the suit land, including efforts to transfer, charge or subdivide the same, with the clear intention of defeating the lower court's judgment and rendering the appeal nugatory. There is a real and imminent risk that the subject matter of the appeal will be altered irreversibly or placed in the hands of third parties, unless the orders sought are issued. He requests this court to permanently restrain the Appellants from entering or in any way interfering with the suit land where he is in occupation.

3. The Appellants opposed the application vide their replying affidavit sworn by the 2<sup>nd</sup> Respondent on 25/6/2025. He avers that the deceased herein, who died on 17/9/2021 was their father and L.R No. Abogeta/Nkachie/210 was subdivided on 20/6/2017. The said land does not therefore exist, and thus the judgment in Nkubu PMCC No. 2/2017 is

moot and unimplementable. The Respondent has never been in possession or occupation of the suit properties and his application is *res-judicata*, misleading and an abuse of the court process following the dismissal of his earlier application dated 25/10/2024.

4. The application was canvassed by way of written submissions, which were duly filed by Counsel.

### **Determination**

5. Having considered the application, the response thereto and the submissions on record together with the cited authorities, I find the sole

issue for determination to be whether the Respondent has met the threshold for grant of the orders sought.

6. The deceased herein was ordered by the court vide its judgment of 28/11/2019 to transfer L.R No. Abogeta/Nkachie/210, which has since been subdivided into L.R Nos. 2150, 2151, 2152 and 476 to the Respondent herein. The deceased unsuccessfully appealed to the Environment and Land Court, which appeal was dismissed on 15/12/2021. Unperturbed and evidently intent on circumventing the course of justice, the Appellants instituted Nkubu SPMC Succession Cause No. E040/2022 wherein a certificate of confirmation of grant to distribute the resultant subdivisions of L.R No. Abogeta/Nkachie/210 amongst the heirs of the deceased was subsequently issued. That grant was however revoked on 9/4/2025, which necessitated the filing of the instant appeal.

7. It is apparent that the Respondent has established a prima facie case to warrant grant of the orders sought. The Respondent seeks a permanent injunction which cannot be issued at an interlocutory stage, as espoused in **Salim Lemuta Kanyoike & Another v Erick Konchella & 2 Others [2006] eKLR**, as follows; ***“...A prayer for permanent injunction cannot issue at the interlocutory stage. This may be sought later on during the hearing of the suit itself.”***

8. Similarly in **Kenya Power & Lighting Co. Limited v Sheriff Molana Habib (2018) eKLR**, the Court (*W. Korir J*) expounded as follows; ***“...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected. A permanent injunction is***

***different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are***

***normally meant to protect the subject matter of the suit as the court hears the parties.”***

9. In order to render substantive justice, meet the ends of justice and ensure the Appellants’ appeal is not rendered nugatory, I will, on the test in **Giella v Cassman Brown (1973) EA 358**, grant the Respondent a temporary injunction pending the hearing and determination of the appeal. I will equally grant the restriction sought to preserve the substratum of the appeal. On the flipside, I find that the other prayers are pre-emptive and cannot issue during the pendency of the intended appeal.

10. The issue of *res judicata* does not arise as the application dated 25/10/2024 was dismissed on a technicality, because L.R No. Abogeta/Nkachie/210 had since ceased to exist pursuant to its subdivision into the resultant parcels.

11. The upshot from the foregoing analysis is that the application dated 16/6/2025 is merited and it is allowed in the following terms:

**1. The Appellants by themselves, their servants and or agents are restrained from entering or in any way interfering with the Respondent/Applicant's parcels of land known as ABOGETA/NKACHIE 1680, 2150, 2151, 2152, 2153 and 476 pending the hearing and determination of the appeal.**

**2. An order is hereby issued directing the Chief Land Registrar to place a restriction on Title Numbers ABOGETA/NKACHIE/1680, 2150, 2151, 2152 and 476 restraining any dealings including**

**transfer, charge, lease, or subdivision pending  
the hearing and determination of this appeal.**

**DATED AND DELIVERED AT MERU THIS 13<sup>TH</sup> DAY OF MAY,  
2026.**

**S.M. GITHINJI -JUDGE**

**13/5/2026**

**In the presence of:-**

Ms. Makandi for the Applicant.

Mr. Gikunda Kiautha for the Respondent.