

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ELCL CASE NO. E038 OF 2025

FLORENCE NJAMBI MBOGOH.....
.....PLAINTIFF

VERSUS

DR. WILSON TONUI-MANAGING DIRECTOR.....1ST
DEFENDANT

MESHACK KEMEI.....2ND
DEFENDANT

AGRICULTURAL DEVELOPMENT
CORPORATION.....3RD
DEFENDANT

AS CONSOLIDATED WITH
ELCL CASE NO. E049 OF 2025

BARTANY INVESTMENTS COMPANY
LIMITED.....PLAINTIFF

VERSUS

FLORENCE NJAMBI MBOGOH.....1ST
DEFENDANT

AGRICULTURAL DEVELOPMENT
CORPORATION.....2ND
DEFENDANT

THE CHIEF LAND REGISTRAR.....3RD
DEFENDANT

RULING

1. This is a matter wherein the ELC Land Case No. E038 of 2025 and ELC Land Case No. E049 of 2025 were consolidated with ELC Land Case No. E038 is the lead file. For ease of reference, the parties herein shall be referred to as they appeared in the ELC Land Case No. E038 of 2025.

2. Before me, therefore, are two applications where the first Application is a Notice of Motion dated 31st July 2025 brought by the Plaintiff herein pursuant to the provisions of Sections IA, 1B and 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions seeking the following orders:

i. Spent

ii. Spent

iii. That the Honourable Court be pleased to issue an Order for injunction restraining the Defendants/Respondents, their servants, agents and/or other persons duly authorized by the Defendants/Respondents from denying the Plaintiff, her servants, agents, and/or other persons duly authorized by the Plaintiff access to all that property known as Land Reference Number 28068/84 situate in West of Lake Naivasha in the Nakuru District pending hearing and determination of this Suit.

iv. Spent.

v. The Honourable Court be pleased to issue and Order for injunction restraining the Defendants/Respondents, their servants, agents and/or other persons duly authorized by the Defendants/Respondents from using the police or other persons duly authorized by the Defendants/Respondents to intimidate the Plaintiff off all that property known as Land Reference Number 28068/84 situate in West of Lake Naivasha in the Nakuru District pending hearing and determination of this Suit.

vi. Spent.

vii. The Honourable Court be pleased to issue and Order for injunction restraining the Defendants/Respondents, their servants, agents and/or other persons duly authorized by the Defendants/Respondents from trespassing onto, wasting, constructing, cultivating, or otherwise interfering

or dealing with all that property known as Land Reference Number 28068/84 situate in West of Lake Naivasha in the Nakuru District pending hearing and determination of this Suit.

viii. That the costs of the Application be provided for.

3. The Application was supported by the grounds therein and the Supporting Affidavit of even date sworn by Florence Njambi Mbogoh, the Plaintiff who deposed that she was the registered owner of all that property known as Land Reference Number 28068/84 situate in West of Lake Naivasha in the Nakuru District (the Suit Property).
4. That sometime in the year 2006, the 3rd Defendant allotted Ndabibi Plot Number 632 to Stephen Gichovi Mbogoh, her husband, who then voluntarily gifted her the said land with no objection from the 3rd Defendant.
5. That following the allotment and endowment of Plot Number 632, she made part payment of the requisite allotment fees of Kshs. 177,600/= to the 3rd Defendant through Lands Limited, a wholly owned subsidiary of the said 3rd Defendant and the final payment in May 2011.
6. That sometime in early 2012, shortly after she had completed payment of the requisite allotment fees, the 3rd Defendant communicated that it had decided to exchange Plot No. 632 with Plot No. 281, now known as Land Reference Number 28068/84, situated west of Lake Naivasha in the Nakuru District, the Suit Property herein, for allotment purposes. That subsequently, the 3rd Defendant directed its surveyor to schedule a meeting with the Plaintiff at Ndabibi to assist in identifying the beacons of the Suit Property. That her husband and a family friend, Mike M. H. Tanyassis, accompanied her to the said meeting on the scheduled date.
7. Soon thereafter, she took possession of the Suit Property, fenced it with cedar posts and barbed wire, and planted grevillea trees on the inner side of the fence. She then began farming on the Suit Property, erected a temporary house for the farm worker, and built a granary to store the harvest. She later caused the Suit Property to be leased to third parties

for farming purposes, under which Mr Stephen Karanja, herein referred to as the lessee, leased the Suit Property for the past nine years or thereabouts while she was pursuing the transfer of the Suit Property from the 3rd Defendant. She was successful on 21st May 2013.

8. That following the aforesaid transfer, she initiated the process of obtaining the title document for the Suit Property and successfully finalised it in 2016, with the issuance of the Certificate of Title to the Suit Property in her name. That the said Certificate of Title and other related documents were released to her in March 2017 by Cheptumo & Company Advocates, the 3rd Defendant's lawyer, through her authorised representative, her husband.
9. That she had enjoyed quiet possession of the Suit Property until on or about 3rd March 2025, when her husband received a call from the Lessee in her presence, informing him that the said Lessee had been denied access to the Suit Property by the 2nd Defendant who was accompanied by two gentlemen wearing Administration Police Officers' uniforms, with instructions that the owner should submit documentation proving ownership of the Suit Property to the office of the 3rd Defendant for verification by the 1st Defendant.
10. The Plaintiff recounted that upon visiting the site, she found the access blocked and her fence torn down. She stated that the 2nd Defendant had demanded that the 1st Defendant verify the ownership documents. Despite her numerous attempts to provide these documents by letter and in office visits, she claimed the 1st Defendant remained unavailable and failed to respond to her inquiries.
11. On 22nd March 2025, she visited the Suit Property with her husband to assess materials needed for fencing the area where the fence had been removed. Shortly after their arrival, the 2nd Defendant arrived, and she explained the purpose of their visit, giving him a copy of the acknowledged 10th March Letter for his review. After reviewing the letter, the 2nd Defendant permitted her to remove the "barrier" that blocked access to the Suit Property, but refused her permission to use the

property, stating only the 1st Defendant could authorise that once ownership was confirmed.

12. They agreed that she would acquire fencing materials to secure the boundary where the fence was torn down and later install them when convenient. The 2nd Defendant, his agents, and servants agreed not to trespass or interfere with the Suit Property.
13. That shortly after leaving the Suit Property, she had received a call from the farm worker that the 2nd Defendant had entered the Suit Property, ploughed and harrowed the same using Tractors of Registration Numbers KCT218Y and KCP865K, with the intention of cultivating on it.
14. The Plaintiff deposed that following the 2nd Defendant's breach of his earlier promise not to interfere with the land, she had requested her husband to call him on 23rd March 2025. During this conversation, the 2nd Defendant reportedly apologized for the ploughing, promised to cease cultivation, and reaffirmed that the Plaintiff was free to proceed with fencing the property.
15. She further stated that, although she had subsequently engaged a contractor, she remained cautious due to the high cost of materials. Consequently, she had her husband make a follow-up call on 25th March 2025, during which the 2nd Defendant once again confirmed that she had his permission to procure and deliver the fencing materials to the site.
16. The Plaintiff averred that despite the prior assurances, her efforts to secure the property were thwarted on 25th March 2025. She stated that upon arriving at the site with her materials, she discovered that the 2nd Defendant's representatives and Administration Police had barred her contractor from working. She further deposed that the police ordered her to stop the installation until formal authorization was granted.
17. According to the Plaintiff, the 2nd Defendant's team cited an ownership dispute as the reason for the interference. She noted that she was subsequently directed to attend a meeting at the property the following morning with the 2nd Defendant and officers from the Kongoni Police

Station to deliberate on the matter. Consequently, she agreed to postpone the work and left her materials on the site pending the outcome of that meeting.

18. The Plaintiff deposed that the scheduled meeting took place on 26th March 2025, attended by herself, her husband, the 2nd Defendant, and several high-ranking police officers, including the Deputy OCS and the CID Officer of Kongoni Police Station. She stated that a mutual agreement was reached: she would pause the fencing pending verification by the 1st Defendant, and the 2nd Defendant would strictly refrain from any activity on the land. However, she alleged that the 2nd Defendant immediately breached this pact by planting maize immediately after the meeting concluded.
19. She further averred that when her husband reported the breach to Inspector Muranda, the officer stated he could not contact the 2nd Defendant. After the 1st Defendant's continued silence, the Plaintiff had her husband draft a formal letter dated 31st March 2025, detailing the denial of access and demanding verification of ownership.
20. Finally, the Plaintiff recounted her attempt to hand-deliver this letter on 1st April 2025. She stated that despite waiting at the 1st Defendant's chambers for hours and expressing a willingness to wait all day, his secretary eventually informed them that he would be unavailable indefinitely. The Plaintiff concluded that it had become evident that the 1st Defendant was intentionally evading them to avoid addressing the matter.
21. The Plaintiff deposed that before leaving the office on 1st April 2025, she had her husband make a final, unsuccessful attempt to call the 1st Defendant. She then ensured that the letter dated 31st March 2025 was formally received and stamped by the 1st Defendant's secretary, while also delivering a copy to the 3rd Defendant's Corporation Secretary. Despite these efforts and a follow-up call on 11th April 2025, the 1st Defendant failed to respond.

22. She further averred that as the rightful owner who has consistently paid all land rates and requisite charges, she should be allowed to use the property without interference. She noted that she officially reported the 2nd Defendant's forcible entry to the Kongoni Police Station on 22nd July 2025.
23. She expressed a grave fear that the Defendants intend to construct permanent structures, sell the land to third parties, and continue using an unprocedural verification process and police intimidation to deny her access. She maintained that these actions constitute a direct and unlawful infringement of her proprietary rights as guaranteed under the Constitution.
24. The Plaintiff averred that the Defendants' actions had effectively barred her from utilising or leasing the property, as farming has become impossible due to the denial of access. She stated that this interference forced her to cancel the 2025 Lease Agreement and refund the Ksh 200,000/- annual rent to the lessee. She further deposed that this has resulted in a significant loss of earnings and concluded that, in the interest of fairness and the protection of her rights, the court should grant the prayers sought in her application.
25. In opposition to the Plaintiff's application, the 1st and 3rd Defendants filed a Replying Affidavit sworn on 26th February 2026, by Dr. Wilson Tonui, the 1st Defendant and Managing Director of the 3rd Defendant, who deposed that the 3rd Defendant never allocated the property known as L.R. No. 28068/84 to the Plaintiff or her husband. He stated that a comprehensive review of the corporation's records revealed no evidence of a lawful allocation or transfer in the Plaintiff's favour. He further asserted that any valid disposal of land by the 3rd Defendant must strictly adhere to an elaborate, structured legal procedure, which the Plaintiff's purported acquisition failed to follow, and which procedure includes, inter alia:
- i. Issuance of a valid letter of offer.
 - ii. Payment of the requisite consideration;

- iii. Execution of completion documents and
 - iv. Proper documentation and registration in accordance with the law.
26. He asserted that no valid legal interest can vest in a party without lawful allocation records and the payment of proper consideration. He maintained that any title acquired through unprocedural or irregular means lacks a valid root and is, therefore, null and void ab initio.
27. He denied ever personally or through agents having denied the Plaintiff access to the property and clarified that the 1st and 2nd Defendants are employees of the 3rd Defendant, acting strictly within their official mandates. That they had not unlawfully dispossessed the Plaintiff.
28. He argued that the Plaintiff had failed to demonstrate a sustainable cause of action against the 1st and 2nd Defendants individually, as they were merely employees whose actions were undertaken in the course of employment.
29. That the Application had not disclosed any reasonable cause of action or relief against the individual Defendants. Furthermore, he contended that the Plaintiff had failed to establish a prima facie case with a probability of success, which is the legal standard required to grant injunctive orders.
30. He further deposed that where there are competing claims or titles, the court should not grant an injunction but should instead proceed to a full trial to determine the validity of the Plaintiff's title. He maintained that whether the Plaintiff has a valid root of title was a matter of evidence that cannot be decided at this preliminary stage.
31. He deposed that the application is misconceived and premature, describing it as an abuse of the court process that should be struck out. He contended that the Plaintiff has not shown she will suffer irreparable harm, arguing that any alleged loss is quantifiable and could be compensated by monetary damages.
32. The 2nd Defendant, on the other hand, vide his Replying Affidavit dated 4th October 2025, deposed that he is a field officer whose duties do not

include the allocation or verification of land records. He claimed to be a stranger to the Plaintiff's account of how she acquired the property. He clarified that he has never occupied the land, asserted legal rights over it, cultivated it, or blocked the Plaintiff's access. While he acknowledged the property is adjacent to lands administered by the 3rd Defendant, he denied all allegations of interference.

33. He argued that he is not a proper party to the suit because he has no claim to the land, and the Plaintiff has failed to demonstrate a cause of action against him personally. He noted that based on the proceedings, it appeared a third party was actually in occupation of the land, further proving that the allegations against him were unfounded.
34. The 2nd Defendant concluded his deposition by requesting to be excused from the legal proceedings based on the grounds that he possesses no personal claim, legal interest, or possessory rights over the suit property. That his involvement in the Ndabibi area was strictly limited to his professional role as a field officer managing the 3rd Defendant's farms. He maintained that any ownership dispute regarding the land should be determined by the Court only against parties who actually claim an interest in it, asserting that he is not a proper party to the suit.
35. In a rejoinder, the Plaintiff vide her Supplementary Affidavit dated 16th December 2025, maintained that the 2nd Defendant's claim of being a stranger to her ownership was false. She asserted that she had personally informed him of her acquisition and provided him with copies of her ownership documents on multiple occasions when seeking access to the land.
36. She reaffirmed that the 2nd Defendant and his agents blocked her access, ploughed the land, and planted maize. She emphasized that he used Administration Police officers to intimidate her and her representatives.
37. The Plaintiff detailed her efforts to seek help from law enforcement, including reporting property destruction at the Ndabibi Police Post via OB No. 9/3/12/2025 and the Naivasha Sub-County CID. She noted that the

Deputy OCS of Kongoni and CID officers informed her they could not stop the 2nd Defendant without a formal Court Order.

38. She deposed that the 2nd Defendant's continued cultivation of the land was in direct violation of the Court's express Orders issued on 1st August 2025, which prohibited any adverse dealings with the property.
39. The Plaintiff strongly opposed the 2nd Defendant's request to be removed from the suit. She argued that since he was the primary individual responsible for the destruction and interference on the land, he must remain a party to the proceedings. She concluded by urging the Court to find her application merited and grant the requested injunctive orders.
40. The second Application is a Notice of Motion dated 15th October 2025 brought pursuant to the provisions of Order 40 Rules 1, 2,3,4 & 8 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1B and 3A of the Civil Procedure Act and the inherent power of the court wherein Bartany Investment Company Limited (the company), the Plaintiff in E049 of 2025, has sought for Orders of temporary injunction restraining the Defendants therein (Plaintiff and the 3rd Defendants in E038) herein as well as the Chief Land Registrar either by themselves or their agents, staff or any person howsoever from invading, trespassing, remaining upon, developing, selling, transferring, gifting, cultivating, dealing, evicting the Plaintiff and or its agents or staff, and or in any manner whatsoever interfering with the Plaintiff's occupation and use of the property known as L.R No. 28068/84 situated in Ndabibi-Naivasha within Nakuru County pending the hearing and determination of the suit.
41. The said Application is supported by the grounds therein and the Supporting Affidavit of equal date sworn by John Shiundu, a director of Bartany Investments Company Limited (the Company) who deposed that the Company was the lawful registered owner and in occupation of the property known as L.R No. 28068/84 situated in Ndabibi-Naivasha within Nakuru County.

42. That on 19th December 2011, the Company applied to the 3rd Defendant (ADC) for the allocation of 100 acres of land in Ndabibi wherein it had been issued with an allocation letter for the Suit Property on 13th February 2012.
43. That the Company accepted the offer on 7th March 2012 and paid a consideration of Ksh 300,000/= wherein a receipt was issued by the 3rd Defendant's subsidiary (Lands Limited) on 8th March 2012. The Company maintains that the transfer was legally formalized by obtaining the necessary Land Control Board (LCB) consent for the transfer where a transfer instrument was executed on 13th November 2015. That the Company's interest was officially registered on 19th November 2015 vide a Certificate of Title IR No. 135971.
44. The Company asserts it has enjoyed quiet and peaceful possession of the land since its acquisition until the recent interference, where armed goons acting on behalf of the Plaintiff (Florence Njambi Mbogoh) had recently invaded the property in an attempt to forcibly and illegally evict the Company and its staff. That the attacks had intensified, creating an imminent risk of illegal eviction and necessitating urgent court intervention through an injunction.
45. That having discovered that the Plaintiff had filed a lawsuit in ELC No. E038 of 2025, it had applied to be joined as the 4th Defendant to protect its interests, where the Plaintiff had vehemently opposed this joinder, arguing she had no claim against it. Following this opposition, it withdrew its joinder application and chose to file its own substantive suit No. E049 of 2025) to defend its property rights.
46. That it was a suspicion of the Plaintiff's Husband (Stephen Mbogoh) and a question about how the land allegedly allotted to him was strangely registered in the Plaintiff's name without a clear legal basis. A curious inconsistency was that while the Plaintiff claimed ownership from 2016, her 2024 Lease Agreement reportedly named her husband, Stephen Mbogoh, as the Lessor/Landlord. It characterised these actions as a

calculated scheme by the Plaintiff and her husband, a former member of ADC, to illegally dispossess the Company of its lawfully acquired land.

47. The deponent asserted that the Company faced great prejudice and irreparable harm were the the court not intervene. That an illegal eviction would not only stop its farming operations but would result in the wanton destruction of its crops by the Plaintiff and her conspirators.
48. The deponent maintained that the Company had clearly demonstrated a legitimate, registered legal interest in the property. Consequently, any act of dispossession would be a grave injustice. That it was fair, just and equitable for the court to grant the temporary injunction to maintain the status quo and protect its proprietary rights pending the final determination of the suit.
49. In response, the Plaintiff, Florence Njambi Mbogoh, vide her Replying Affidavit sworn on 9th February 2026, characterized the Company's application as frivolous, an abuse of the court process, and a bad-faith attempt to strip her of her proprietary rights. She asserted that she had no knowledge of, or interaction with, the Company or its representatives until their failed attempt to join her original suit (E038 of 2025) as a 4th Defendant.
50. She reaffirmed that she is the sole, lawful, registered owner of the property, having held the title since 25th November 2016. She reiterated the narrative from her initial application, stating that she took possession of the suit land in 2012, fenced the land, and farmed it or leased it to third parties without interference for over a decade. She maintained that her quiet possession was interrupted only in March 2025 by the 2nd Defendant, the specific event that triggered her lawsuit.
51. She specifically attacked the validity of the documents produced by the Company, alleging they were fraudulent and irregular. She claimed that the Company's Certificate of Title was a doctored document prepared to mislead the court. She noted that the copy provided was suspiciously faint and illegible. She pointed out that the accompanying Survey Plan

contained prominent overwriting, which casts serious doubt on its authenticity.

52. Crucially, she observed that the Company's Transfer Instrument lacked a Booking or Presentation Number. She argued that under Land Registration Regulations, the absence of this number means there was no legal evidence that the document was ever presented to the Land Registrar for official registration.
53. The Plaintiff highlighted several inconsistencies in the Company's evidence to the effect that while the Company was directed to pay Lands Limited, its own letter dated 7th March 2012, states it forwarded the money to the 2nd Defendant, wherein curiously, a receipt was then issued by Lands Limited the following day, despite them not being the stated recipient.
54. That whereas the Company had requested 100 acres in 2011, the 2nd Defendant's response allegedly only awarded it approximately 20 acres (8.207 hectares) without addressing the deficit. The Company had further failed to produce mandatory registration documents, including Stamp Duty Declarations, assessment slips, and transaction receipts.
55. That her advocate had conducted a search at the registry, which confirmed her as the sole registered proprietor, and the registry personnel verified that the physical file records match this official search.
56. That a licensed process server, Howard Shungu Pembe, had perused the parcel file for Title No. IR.135971, wherein he had been informed by registry officials that no other record exists showing the Company as the owner; the only valid record names the Plaintiff.
57. She reiterated that she had no knowledge of the Company until its failed attempt to join her suit. She clarified that she has consistently paid land rates and authorized all leases on the property. She contended that the maize crops shown in the Company's application were actually planted illegally by the 2nd Defendant on 26th March 2025, in breach of a prior undertaking.

58. Citing the case in **Jayne Wanjiku Githere v Mary Wanjiru Mwangi**, (sic) she argued that a party cannot be added as a Defendant without the Plaintiff's consent. She maintained that the Company's documents were doctored forgeries intended to frustrate her proprietary rights.
59. She concluded that the alleged transfer of the property to the Company was tainted with fraud and conducted through irregular means. She urged the court to dismiss the Company's application on the basis that its claim to ownership lacks a valid legal foundation.
60. The two Applications were canvassed by way of written submissions

Plaintiff's Submissions

61. The Plaintiff's submissions, dated 17th February 2026, support her own application for an injunction while vehemently opposing the competing application by Bartany Investment Company Limited. Her arguments are organised around the three-stage test for interlocutory injunctions, as established in **Giella v. Cassman Brown (1973) EA 358**.
62. On the issue of whether she has established a Prima Facie Case, the Plaintiff asserts that she has a case with a probability of success based on the following:
- i. Lawful Acquisition & Possession: She reiterated her history of ownership since 2012, including paying rates, erecting structures (a house and granary), and leasing the land to third parties.
 - ii. Challenges to the Company's Title: She argued the Company's title is a forgery because its transfer instrument lacks a booking/presentation number, which is a mandatory requirement under Land Registration Regulations.
 - iii. Verification of Records: She noted that a perusal of the official parcel file at the registry confirmed her as the

sole registered owner and revealed no records favouring the Company.

- iv. Ongoing Trespass: She accused the 2nd Defendant of active interference, including demolishing her granary and stealing salvaged materials (timber, roofing sheets, and hay) in direct violation of court orders issued on 1st August 2025.

63. On the second issue of whether she has established that she would suffer irreparable harm, the Plaintiff argued that monetary damages would not be an adequate remedy because:

- i. The interference violates her proprietary rights safeguarded by the Constitution of Kenya.
- ii. She voiced concern that the Defendants or the Company could sell the property to unaware third parties or erect permanent structures using an invalid title.
- iii. The Company's allegations of forcible eviction lack clarity and evidence, claiming that because it has no registered interest, it cannot be harmed.

64. Regarding the balance of convenience, the Plaintiff argued that it favors her because she proved long-term, quiet possession along with a verifiable document trail. Meanwhile, the Defendants and the Company had not demonstrated any inconvenience that would outweigh the loss she would face if her proprietary rights were not safeguarded.

65. To buttress her legal standing, the Plaintiff relied on the following authorities :

- i. **Nguruman Limited v. Jan Bonde Nielsen [2014] eKLR** to Reiterated the Giella principles in a modern Kenyan context.
- ii. **Mrao Limited v. First American Bank of Kenya [2003] KLR 125** to define a prima facie case as one

which is more than arguable and has a probability of success.

- iii. **Gikoi v. Kahiu & 4 Others [2025] KEELC 686** to reiterate that a transfer instrument without a chronological booking number is invalid and indicates fraudulent procurement.
- iv. **NJA v. ZJA alias ZP [2023] KECA 937**, which established that a valid transfer must bear signatures, PIN numbers, and ID numbers of both vendor and purchaser.
- v. **Choi & 3 Others v. Goldstein Group Services [2025] KEELC 7234**, to argue that evidence of registration must be corroborated by official registry records.
- vi. **Kenya Plantation Agricultural Workers Union v. Lauren International Flowers Ltd [2023] KEELRC 9**, which had discussed the nature of irreparable harm in proprietary and labour disputes.
- vii. **Bryan Chebii Kipkoech v. Barnabas Tuitoek Bargoria [2019] eKLR**, which had defined balance of convenience as the comparison of hardships between the parties.

66. In conclusion, the Plaintiff urged the Court to dismiss the Company's application and grant her injunctive relief, arguing that her title is indefeasible while the Company's claim is unsupported by any verifiable document trail.

1st to 3rd Defendants' Submissions

67. The 1st to 3rd Defendants (ADC and its officials) filed their submissions on 26th February 2026, arguing that the Plaintiff's application for an injunction was an abuse of the court process and failed to meet the requisite legal thresholds.

68. On whether the Plaintiff had proved she had made out a *prima facie* case, they argued that the Plaintiff's claims of possession and interference were unsubstantiated allegations and hearsay, lacking photographic or documentary proof. That while the Plaintiff produced a title, the Defendants asserted that their internal records show her title was fraudulently obtained.
69. They relied on the decision in **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**; to argue that when a title is challenged, a proprietor cannot simply dangle the document; they must prove the legality of its acquisition. That under Sections 107 & 109 of the Evidence Act, the Plaintiff failed to discharge her burden of proof, particularly since she admitted she was not in physical possession at the time.
70. On the issue of irreparable injury, the Defendants relied on **Nguruman Limited v Jan Bonde Nielsen**, (sic) to argue that the conditions for an injunction were sequential and since no *prima facie* case was established, the court should not even consider irreparable injury.
71. They contended that even if the Plaintiff suffered a loss, it was purely proprietary and capable of being quantified and compensated through an award of damages, making an equitable injunction unnecessary.
72. The Defendants relied on the decision in **Pius Kipchirchir Kogo v. Frank Kimeli Tenai [2018] eKLR** to contend that the balance of convenience favors them, asserting that, as a state corporation, they are in a "lawful position" and that issuing an injunction would disrupt the current situation. They highlighted the "glaring gaps" in the Plaintiff's ownership documents, suggesting these issues nearly approach criminality. Since an injunction is an equitable remedy, they argued that the Plaintiff cannot leverage it because she does not come to court with "clean hands." To resolve the conflicting accounts of possession, the Defendants proposed that the Court conduct a site visit to ascertain the actual status of the ground. They relied on the decision in **Mbuthia v Jimba Credit Finance Corporation & Another** (sic) to seek preservation orders of the status quo when doubt exists.

73. In conclusion, they urged the Court to dismiss the Plaintiff's application with costs, asserting that the existence of two competing titles can only be resolved through a full trial with cross-examination, and that no immediate danger exists to warrant an injunction.

The Company/Plaintiff in ELCLC No. E049 of 2025 Submission.

74. In its submissions dated 9th February 2026, the company contended that it was the sole party meeting the criteria for an interlocutory injunction. It also claimed that the Plaintiff, Florence Njambi Mbogoh, did not have a valid claim. The company emphasized that its case was strong and well-founded, backed by a documented and superior root of title registered on 19th November 2015, which predates the Plaintiff's 2016 title. Unlike the Plaintiff, it provided a complete paper trail, including the 2011 allocation application, the 2012 ADC offer letter, a banker's cheque for Kshs. 300,000/=, and the Land Control Board consent.

75. Referring to **Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) Neutral citation: [2023] KESC 79 KLR**, the Company argued that even if the Plaintiff had an allotment, which they deny, her own admission of paying five years late, from 2006 to 2011, meant that the offer had automatically expired. As a result, she could not acquire any legal rights. The Company also noted that the Plaintiff did not produce an allocation letter, acceptance letter, or any consent from ADC regarding the land gift from her husband.

76. Regarding irreparable injury and physical possession, the Company presented photographs that it asserts are uncontested, demonstrating its ongoing possession and agricultural use of the land since 2012. It challenged the Plaintiff's claim of possession by noting that her Lease Agreement lists Prof. Stephen G. Mbogoh (her husband) as the Lessor, not her, implying she lacks a personal possessory interest.

77. Based on the holding in **Simon Kimemia Muthondu v Moses Mugo Maringa [2017] eKLR**, the Company contended that issuing an injunction for the Plaintiff would amount to evicting the Company without

a prior hearing, leading to irreparable damage to its agricultural activities and finances.

78. Regarding the balance of convenience, referencing the case of **Peter Kihika Ng'ang'a v Amos Kimeli Chamdala [2021] eKLR**, the Company contended that the balance favors the party actually occupying the land. Since the Plaintiff admitted she is not in occupation, the Company argued it would suffer the "greatest damage" if its farming activities were interrupted.
79. In conclusion, the Company urged the Court to dismiss the Plaintiff's application dated 31st July 2025 and allow its own application of 15th October 2025, specifically seeking an order to preserve the status quo pending the suit's resolution and to affirm its status as the only party with a validly acquired interest and current possession of the subject matter of the suit.

Determination.

80. This is a matter wherein the ELC Land Case No. E038 of 2025 and ELC Land Case No. E049 of 2025 were consolidated with ELC Land Case No. E038 being the lead file. For ease of reference, the parties herein shall be referred to as they appeared in their respective matters.
81. I have considered the Plaintiffs' applications in both ELC E038 and E049 of 2025. I have further considered the response in both applications, the submissions by counsel, the authorities cited and the applicable law. I note that, whereas in both applications the parties seek to protect their respective interests over the same parcel of land, L.R. No. 28068/84, their narratives and supporting evidence present a direct and irreconcilable conflict regarding the root of title and physical possession.
82. The Plaintiff in E038, Florence Njambi Mbogoh, bases her claim on the suit property (L.R. No. 28068/84). She states that she legally acquired the land through an allotment exchange in 2012, paying Ksh 177,600/= in full and receiving a valid title in 2016. She reports exercising quiet possession from 2012 to 2025, during which she fenced the land, constructed

structures, and leased it out. In March 2025, she claims the 2nd Defendant, supported by the Administration Police, started blocking her access under the pretext of an unprocedural verification process. She alleges that the 2nd Defendant violated a formal agreement made before senior police officers by planting maize on her land right after a meeting aimed at resolving the dispute. She highlights the economic harm caused by this interference, including refunding Ksh 200,000/= in rent to her tenant due to the denial of access. Subsequently, she moved the court to issue a temporary injunction against the Respondents, restraining them from interfering with her suit parcel of land.

83. In response to the Plaintiff's application, Dr Tonui, for the 1st to 3rd Defendants, denied ever personally or through agents denying the Plaintiff access to the property. He clarified that the 1st and 2nd Defendants, who had been improperly sued, as they were merely employees whose actions were undertaken in the course of employment, were acting strictly within their official mandates, and denied any unlawful dispossession of the Plaintiff.

84. The Application disclosed no reasonable cause of action or relief against the individual Defendants. He contended that the Plaintiff had failed to establish a prima facie case with a probability of success, the legal standard for granting injunctive relief. That said, because there are competing claims or titles, the court should not grant an injunction but should instead proceed to a full trial to determine the validity of the Plaintiff's title. He maintained that whether the Plaintiff has a valid root of title was a matter of evidence that cannot be decided at this preliminary stage. He deposed that the application is misconceived and premature, an abuse of the court process, and should be struck out, contending that the Plaintiff had not shown she would suffer irreparable harm and that any alleged loss is quantifiable and could be compensated by monetary damages.

85. The 2nd Defendant argued that he is merely a field officer and not involved in the Plaintiff's claims. He denied ever occupying the land, claiming legal rights over it, cultivating it, or obstructing the Plaintiff's access. He acknowledged the property's proximity to lands managed by the 3rd Defendant but pointed out that proceedings suggest a third party was actually occupying the land. His stance was that, since the Plaintiff did not demonstrate a personal cause of action against him, he is not the correct party in this suit.
86. In the second case, ELCLC No E049 of 2025, the Plaintiff, Bartany Investment Company Limited, requested a temporary injunction through its Notice of Motion dated October 2025. It aimed to protect its ownership and possession of land parcel L.R. No. 28068/84, asserting that it is the rightful registered owner. The company claims to have acquired the property from the Agricultural Development Corporation (ADC) in February 2012 and completed a formal transfer on 13th November 2015, after paying Kshs. 300,000/=. Since then, it has peacefully occupied and used the land for agricultural activities. Recently, armed individuals acting for Florence Njambi Mbogoh (the Plaintiff in the main case) invaded the land, attempting to violently eject the company. These invasions have intensified, risking illegal eviction and crop destruction based on allegedly fraudulent ownership documents. The company has demonstrated a legal interest through its 2015 registration; without an injunction, it would suffer irreparable losses, including loss of land use and crop investments. It is fair and just for the Court to prevent the Plaintiff and the Land Registrar from interfering with its occupation until the case is fully heard.
87. In response to the Company's competing claim, the Plaintiff in the lead file challenged the authenticity of their documentation, denying the Company's ownership claim. She described their title documents as forged and maliciously created to mislead the court. She highlighted critical flaws in the Company's evidence, such as the absence of a Booking/Presentation Number on their transfer instrument, inconsistencies in payment records, and discrepancies in acreage. Relying

on a Certified Official Search from November 2025 and a review of the parcel file, which confirmed her as the sole registered owner, she demonstrated there was no record of the Company's interest. She also refutes the Company's claim of occupation, stating that any maize on the land was illegally planted by the 2nd Defendant (ADC), not the Company. She dismisses the Company's suit as a calculated scheme involving the Defendants to undermine her constitutional proprietary rights.

88. She asserted that she is a genuine owner with a clear, verifiable title and a longstanding history of physical possession. She argued that the 1st and 2nd Defendants were overstepping their authority by attempting to dispossess her, and that Bartany Investment Company was an intruder using fraudulent documents to claim land she had owned and managed since 2012.

89. The celebrated case of **Giella vs Cassman Brown (1973) EA 358** sets out conditions for the grant of an interlocutory injunction as follows: -

- i. Is there a serious issue to be tried (prima facie case)?
- ii. Will the Applicant suffer irreparable harm if the injunction is not granted?
- iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience").

90. A prima facie case was described in the case of **Mrao vs First American Bank of Kenya Limited & 2 Others (2003) KLR 125**, as follows:

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

91. At this interlocutory stage, the Court is not required to determine the ultimate validity of the competing titles. The Court must apply the principles in the **Giella** case supra to determine;

- i. Whether the Applicants have established a prima facie case with a probability of success?
- ii. Whether the Applicants will suffer irreparable injury if the injunction is not granted?
- iii. Where does the balance of convenience lie?

92. As seen earlier, the court needs only to determine that, on the surface, the party seeking an injunction has a right that has been or is at risk of being violated. The Applicants need not prove ownership; it suffices to demonstrate a genuine and honest dispute over the existence of the claimed right.

93. Lord Diplock in **American Cyanamid Co. vs Ethicon Limited (1975) 1 ALL ER 504; (1975) A.C. 396 HL at 510** observed as follows;

"It is no part of the Court's function at this stage of the litigation to try and resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."

94. This case presents a classic double-title scenario in which two parties claim registered ownership of the same property, L.R. No. 28068/84, resulting in a stalemate over physical possession. In land disputes involving competing titles, a Status Quo Order is a common interim measure that freezes the status quo and preserves the property in its current state until the court determines the true owner at trial.

95. Land is unique, and if the court does not issue an order, one party is likely to use it to the detriment of the other; therefore, a status quo order

ensures that, if either party eventually wins, they receive the land in the same condition it was in when the suit began. The court's practice directions Gazette Notice No. 3461/2025 Practice Direction No. 23(l) gives the court the leeway and discretion to make an order for status quo to be maintained until the determination of the case.

96. Both the Plaintiff and Bartany Investment Co. have alleged the use of armed goons and police intimidation to dispossess the other of the suit property, and therefore, without a court order defining the parties' conduct, there is a high risk of physical confrontation on the property.

97. The primary difficulty in this case is determining the current status quo. The Plaintiff in the lead file claims the status quo is her 13-year occupation, which was only recently disturbed; the Company claims the status quo is their current occupation and farming activity. If the court simply orders "the status quo be maintained" without clarifying who is currently in possession, it may inadvertently encourage the party currently on the land to further entrench themselves, or invite the other party to try and "regain" possession before the order is served.

98. I find the best approach, given that there are two competing titles where both parties accuse each other of fraud, and further given that both parties claim to be in possession and/or occupation of the suit land, the most equitable path is to grant a status quo Order with specific restrictive conditions as herein under:

- i. Neither party shall sell, transfer, mortgage, or lease the land to any third party.
- ii. Neither party shall change the character of the land.
- iii. If one party is currently cultivating the maize crop mentioned, they are permitted to harvest the existing crops. However, they must not till or plant on the land again until this matter has been heard and determined.
- iv. The costs of the application shall be in the cause.

- v. Parties to comply with the provisions of Order 11 of the Civil Procedure Rules within the next 21 days for the hearing of the main suit herein.

It is so ordered

**Dated and delivered via Microsoft Teams at Naivasha this 14th day of May
2026.**

M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE