



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MILIMANI LAW COURTS NAIROBI**  
**ELCLC CASE NO. E020 OF 2026**

**CAROLINE NYAMBURA WAIRIMU & ANOTHER (Suing as the  
Administrators of the Estate of Regina Wairimu (Deceased))  
.....PLAINTIFFS/APPLICANTS**

**-VERSUS-**

**HUSSEIN IBRAHIM  
NUNI.....DEFENDANT/RESPONDENT**

**RULING**

1. This ruling is in respect to two applications; the application dated 20<sup>th</sup> January 2026 and 29<sup>th</sup> January 2026. Pursuant to the directions issued by this Court, both applications before the Court were directed to be canvassed together to enable the Court to render a comprehensive ruling on the same.
2. The two applications are as follows:

**a) The Application dated 20<sup>th</sup> January 2026**

3. The first application is the Plaintiff's Notice of Motion dated 20<sup>th</sup> January 2026 brought under **Sections 1A, 1B and 3A of the Civil**

**Procedure Act, Order 40 Rules 1 and 2 of the Civil Procedure Rules, 2010** and all other enabling provisions of the law. Through the said application, the Plaintiffs/Applicants seek orders of temporary injunction restraining the Defendant/Respondent whether by himself, agents, servants, employees or any person acting under his instructions from entering, trespassing upon, occupying, taking possession of, transferring, leasing, constructing on, demolishing structures or in any other manner interfering with the Plaintiffs' use and possession of Land Reference Number 36/II/28 situated within Eastleigh area in Nairobi City County pending the hearing and determination of the application and the suit. The Applicants further seek an order directing the Officer Commanding Eastleigh North Police Station to supervise compliance with the Court orders.

4. The application is premised on the grounds set out on the face thereof and the supporting affidavit of CAROLINE NYAMBURA WAIRIMU sworn on 20<sup>th</sup> January 2026. The deponent avers that the Applicants are the duly appointed administrators of the Estate of the late Regina Wairimu, deceased, pursuant to a Grant of Letters of Administration Intestate issued on 12<sup>th</sup> April 2022 in Nairobi High Court Succession Cause No. E121 of 2022. She further avers that the deceased was the lawful and registered proprietor of the suit property known as LR No. 36/II/28 having acquired title through an Indenture of Conveyance dated 16<sup>th</sup> July 1995 and that prior to her demise, the deceased together with the Applicants had been in peaceful, uninterrupted and exclusive possession and occupation of the suit property.

5. The Applicants further aver that on diverse dates including 16<sup>th</sup> and 25<sup>th</sup> December 2025 and 4<sup>th</sup> January 2026, the Defendant in the company of armed goons unlawfully entered the suit property and attempted to forcefully evict the Applicants and interfere with their quiet possession thereof. It is contended that the Defendant has taken advantage of the demise of the registered proprietor to fraudulently encroach upon the suit property with the intention of unlawfully dispossessing the estate of its property. The Applicants aver that the Defendant's actions have caused fear, tension and disruption to the occupants of the suit property and that despite police intervention, the Defendant continues to threaten the Applicants' possession and occupation of the property, thereby necessitating the filing of the present application.

### **Response to the Application dated 20<sup>th</sup> January 2026**

6. The application is opposed through the Replying Affidavit sworn by the Defendant/Respondent, HUSSEIN IBRAHIM NUNI. The Respondent avers that the application is frivolous, misconceived and an abuse of the court process and that the interim orders issued on 21<sup>st</sup> January 2026 were obtained through material non-disclosure and misrepresentation of facts. He contends that the Applicants failed to disclose the existence of Nairobi MCELC No. E1146 of 2025 involving substantially similar issues and in which interim orders had allegedly been obtained. The Respondent further avers that the Applicants are engaging in forum shopping and have approached this Court with unclean hands.

7. The Respondent further avers that he is the lawful and registered proprietor of the suit property known as LR No. 36/II/28 having acquired the same from Aguthi Enterprises Limited pursuant to a sale agreement dated 2<sup>nd</sup> July 2015 for a consideration of Kshs. 60,000,000/= . He states that a Deed of Indenture dated 24<sup>th</sup> February 2016 was subsequently registered in his favour on 15<sup>th</sup> March 2016. The Respondent avers that prior to the purchase, he had entered into a long-term lease over the suit property with Aguthi Enterprises Limited and that following disputes between the parties, the matter culminated in Milimani ELC Case No. 432 of 2014 and subsequent proceedings before the Court of Appeal before the parties resolved the dispute through the sale transaction. He further contends that extensive due diligence conducted at the Ministry of Lands established that the suit property belonged to Aguthi Enterprises Limited and not the deceased Regina Wairimu.
8. The Respondent additionally avers that since purchasing the suit property, he has remained in continuous possession and control thereof and has consistently paid land rates and obtained approvals for development on the property. He denies the allegations that he invaded the property with goons or attempted to evict the Applicants and instead contends that the Applicants are part of a scheme intended to unlawfully deprive him of his property through manipulation of court processes and interference with land records. He maintains that the Applicants have not met the legal threshold for the grant of injunctive orders and urges the Court to dismiss the application and set aside the interim orders issued on 21<sup>st</sup> January

2026.

**b) The Application dated 29<sup>th</sup> January 2026**

9. The second application is the Defendant's Notice of Motion dated 29<sup>th</sup> January 2026 brought under **Articles 10, 20, 21, 24, 47, 50(1), 159 and 259(1) of the Constitution of Kenya, Sections 1A, 1B, 3A, 6, 7, 80 and 100 of the Civil Procedure Act, Order 40 Rule 7, Order 45 Rule 1 and Order 51 Rules 1 and 15 of the Civil Procedure Rules** and all other enabling provisions of the law. Through the said application, the Defendant/Applicant seeks orders inter alia that the interim orders issued by this Court on 21<sup>st</sup> January 2026 be stayed, discharged, set aside and/or reviewed. The Defendant further seeks such other orders as this Court may deem just and expedient in the circumstances.
10. The application is premised on the grounds set out on the face thereof and the supporting affidavit of HUSSEIN IBRAHIM NUNI sworn on 29<sup>th</sup> January 2026. The Defendant avers that he is the registered proprietor of the suit property known as LR No. 36/II/28 situated in Eastleigh, Nairobi, having acquired the same through a registered Deed of Indenture dated 24<sup>th</sup> February 2016 following a sale transaction with Aguthi Enterprises Limited. He contends that the interim orders issued on 21<sup>st</sup> January 2026 were obtained unlawfully through deceit, material non-disclosure and misrepresentation of facts by the Plaintiffs, particularly the failure to disclose the existence of Nairobi MCELC No. E1146 of 2025 in which substantially similar orders had

allegedly been obtained over the same subject matter.

11. The Defendant further avers that he has at all material times been in possession, occupation and control of the suit property and that he has already commenced developments thereon after obtaining the requisite approvals and permits. He denies the Plaintiffs' allegations that he unlawfully invaded the property and instead maintains that the Plaintiffs are attempting to use the court process to unlawfully dispossess him of the suit property through interlocutory orders amounting to a mandatory injunction. The Defendant therefore urges the Court to vacate the interim orders issued on 21<sup>st</sup> January 2026 on the grounds that the same are highly prejudicial, offend established legal principles and were issued without affording him an opportunity to be heard.

### **Response to the Application dated 29<sup>th</sup> January 2026**

12. The Defendant's application is opposed through the Replying Affidavit sworn by CAROLINE NYAMBURA WAIRIMU on 11<sup>th</sup> February 2026. The deponent avers that she, together with the 2<sup>nd</sup> Plaintiff, are the duly appointed administrators of the Estate of the late Regina Wairimu pursuant to a Grant of Letters of Administration Intestate issued on 12<sup>th</sup> April 2022 in Nairobi High Court Succession Cause No. E121 of 2022. She states that by virtue of the provisions of the Law of Succession Act, they possess full legal capacity to institute and defend proceedings on behalf of the estate. She further avers that the deceased was the lawful and registered proprietor of LR No. 36/II/28 by virtue of an Indenture of Conveyance dated 16<sup>th</sup> July 1995 and that

the suit property forms part of the free estate of the deceased.

13. The Plaintiffs/Respondents further aver that the deceased remained in peaceful, open and uninterrupted possession of the suit property until her demise on 8<sup>th</sup> September 2021 and that since then, they as administrators have remained in actual and constructive possession thereof, including managing tenants and developments on the property. They deny the Defendant's assertion that he has ever been in lawful possession of the suit property and contend that on diverse dates in December 2025 and January 2026, the Defendant unlawfully entered the suit property accompanied by several individuals and attempted to intimidate occupants and assert unlawful control over the property. The deponent maintains that the Defendant's conduct amounted to trespass and that the circumstances necessitated the filing of the present suit and application for injunctive relief.
14. The Plaintiffs/Respondents additionally deny allegations of material non-disclosure and aver that Nairobi MCELC No. E1146 of 2025 had already been withdrawn vide a Notice of Withdrawal dated 12<sup>th</sup> January 2026 prior to the institution of the present proceedings. They therefore contend that the present suit is neither sub judice nor res judicata. The deponent further avers that following the issuance of this Court's interim orders, she was summoned by the Directorate of Criminal Investigations regarding the suit property and subjected to threats and intimidation, which she believes were intended to exert pressure in the pending civil dispute. It is therefore contended that the Defendant will suffer no prejudice if restrained from interfering with the suit property and that the balance of convenience tilts in

favour of preserving the Plaintiffs' possession pending the hearing and determination of the suit.

### **Issues for Determination**

15. The Court has considered the two applications, the affidavits in support and in opposition thereto, together with the written submissions filed by the parties. In the Court's view, the following issue arises for determination:

**Whether the Plaintiffs have satisfied the conditions for grant of an interlocutory injunction and whether the interim orders issued on 21<sup>st</sup> January 2026 ought to be discharged, varied and/or set aside.**

### **Analysis**

16. The principles governing the grant of interlocutory injunctions are now settled. In the celebrated case of **Giella -Vs- Cassman Brown & Co. Ltd (1973) EA 358**, the Court held that an applicant must establish a prima facie case with a probability of success, demonstrate that he stands to suffer irreparable injury incapable of compensation by an award of damages and, where the Court is in doubt, the application is determined on a balance of convenience.

17. The Court has also considered the provisions of **Order 40 Rule 7 of the Civil Procedure Rules** which grants the Court power to discharge, vary or set aside an order of injunction upon application by a dissatisfied party. Equally, where interim ex parte orders are

obtained through material non-disclosure, misrepresentation or concealment of material facts, the Court retains an unfettered discretion to vacate such orders in order to uphold the integrity of the judicial process.

18. The Plaintiffs' case is that they are the lawful administrators of the Estate of the late Regina Wairimu and that the deceased was the registered proprietor of LR No. 36/II/28 by virtue of an Indenture of Conveyance dated 16<sup>th</sup> July 1995. They contend that they have remained in possession and occupation of the suit property and that the Defendant unlawfully entered the property accompanied by goons with the intention of dispossessing the estate thereof.
19. The Defendant, on the other hand, asserts that he is the registered proprietor of the suit property having acquired the same from Aguthi Enterprises Limited pursuant to a sale transaction concluded in 2015 and a registered Deed of Indenture dated 24<sup>th</sup> February 2016. He further contends that he has at all material times been in possession and control of the suit property and has undertaken excavation and development thereon after obtaining the requisite approvals from relevant authorities.
20. The Court has carefully considered the rival affidavits and annexures placed before it. Of significance is that the Defendant has exhibited approvals for development, evidence of excavation works on the suit property and photographs depicting the current state of the property. The Defendant has also exhibited evidence of payment of rates and other outgoings in respect of the suit property. These assertions and

documentary evidence were not substantially controverted by the Plaintiffs.

21. Although the Plaintiffs allege that they have remained in possession of the suit property and that they oversee tenants and developments thereon, no material evidence was placed before the Court to demonstrate the existence of the alleged tenants, developments or occupation. No photographs, tenancy records, rent schedules or other evidence of possession were exhibited to support those averments. Indeed, the photographic evidence exhibited by the Defendant portrays a property undergoing excavation and development, a position inconsistent with the Plaintiffs' assertion of continued occupation and management of developments on the land.
22. The Court further notes the Defendant's contention that prior to obtaining the interim orders herein, the Plaintiffs had instituted Nairobi MCELC No. E1146 of 2025 in which similar orders had allegedly been obtained. It is trite that a party approaching the Court for ex parte relief is under a strict obligation to make full disclosure of all material facts, including facts adverse to his or her case. Failure to do so disentitles such a party from equitable relief. In **Bahadurali Ebrahim Shamji -Vs- Al Noor Jamal & 2 Others [1998] eKLR**, the Court held that a litigant who obtains ex parte orders through concealment of material facts risks discharge of the said orders even where the concealed facts may not have altered the ultimate outcome.

23. Further, the interim orders issued on 21<sup>st</sup> January 2026 restrained the Defendant from entering, occupying or taking possession of the suit property. Yet the material presently before the Court indicates that the Defendant had already established possession and had commenced development activities on the property prior to issuance of the orders. In effect, the orders issued ex parte had the consequence of altering rather than preserving the prevailing status quo.
24. At the interlocutory stage, the Court is not required to make definitive findings on ownership or validity of title. However, the Court must evaluate whether the Applicants established a prima facie case warranting preservation orders. From the material presently before Court, serious doubts emerge regarding the Plaintiffs' assertion of possession and occupation of the suit property. Conversely, the material tendered by the Defendant demonstrates a level of possession, control and development that cannot be ignored at this stage.
25. The Court therefore finds that the circumstances surrounding the obtaining of the interim orders, coupled with the unresolved questions regarding possession of the suit property and the apparent non-disclosure concerning Nairobi MCELC No. E1146 of 2025, are matters that weigh heavily against the continuation of the ex parte injunctive orders issued on 21<sup>st</sup> January 2026.

26. Accordingly, the Court is persuaded that sufficient grounds have been established to warrant interference with the interim orders earlier granted pending the hearing and determination of the suit.

### **Disposition**

27. Accordingly, and for the foregoing reasons, the Court makes the following orders:

- a) The Defendant's Notice of Motion dated 29<sup>th</sup> January 2026 be and is hereby allowed.
- b) The interim orders of injunction issued by this Court on 21<sup>st</sup> January 2026 be and are hereby discharged and set aside.
- c) In order to ensure that no prejudice is occasioned to either party, this matter shall be set down for hearing on a priority basis and the main suit shall be heard and determined within sixty (60) days from the date hereof.
- d) Costs of both applications shall abide the outcome of the main suit.

**It is so ordered.**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on **11<sup>th</sup>** day of **May, 2026.**

**MOHAMMED N. KULLOW**

**JUDGE**

**Ruling delivered in the presence of: -**

**Mr. Njenga with Mr. Bashir**..... for the Plaintiffs

**Ms. Wangui for Muchoki**..... for the Defendant

**Philomena W.**..... Court Assistant

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