



REPUBLIC OF KENYA



KENYA LAW
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**Bond v Ngoli (Environment & Land Case E002 of 2025)
[2025] KEELC 1280 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1280 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND CASE E002 OF 2025**

E ASATI, J

MARCH 13, 2025

IN THE MATTER OF: LAND PARCEL KAKAMEGA/BUGONDA/1744

AND

**IN THE MATTER OF SECTION 38 OF THE LIMITATION
OF ACTIONS ACT, CAP 22 LAWS OF KENYA**

BETWEEN

PHEMINES MAKUNGU BOND PLAINTIFF

AND

FRANCIS MUDANGAYA NGOLI DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion application dated 29th January, 2025 expressed to be brought pursuant to the provisions of Order 40 Rules 1 and 2 of the Civil Procedure Rules and Section 3A and 3 of the *Civil Procedure Act*.
2. The application seeks for orders that;
 - a. Pending hearing and determination and the main suit, the Respondent either by himself, his servants or agents be restrained from evicting and/or interfering in any way with the applicant's peaceful occupation of land parcel registration number KAKAMEGA/BUGONDA/1744 measuring 0.24Ha.
 - b. A prohibitory order be issued and the same be registered against land parcel registration number KAKAMEGA/BUGONDA/1744 measuring approximately 0.24Ha.
 - c. Costs of the application be provided for.



3. The application was supported by the averments in the Supporting Affidavit sworn by the applicant on 29th January 2025.
4. The application was opposed vide the contents of the Replying Affidavit sworn by the Respondent on 10th February, 2025.
5. I have considered the application and the grounds in support thereof, the contents of the Replying Affidavit and the oral submissions made on 11th February, 2025.
6. The substantive prayers sought is for temporary injunction to restrain the eviction of the applicant from the land and a prohibitory order to preserve the records in respect of the suit land pending the hearing.
7. The ground for grant of temporary injunction are provided for in Order 40 Rule 1 and as held in the case of *Giella -vs- Cassman Brown Co. Ltd (1973) 358* the Applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience.
8. The case of the Applicant is that even though the Respondent is the current registered owner of the suit land, the Applicant has lived on the land for over 70 years.
9. That upon the demise of the previous registered owner, succession was done secretly and the land sold to the Respondent who became registered owner. That the Respondent has intimated that he intends to evict the Applicant from the land.
10. The Respondent on his part claimed that the land was transferred to him legally and title deed issued to him. That the Applicant has not occupied the land for 70 years but for only 4 years on mutual agreement of the Respondent and a child of the previous registered owner by the name Johan Ngaira.
11. The Respondent submitted that since he bought the land genuinely, he cannot allow the Applicant who is his aunt to continue using the land.
12. It is not denied that it is the Applicant who has possession of the suit land. Whether she has had the possession for 4 years or 70 years will be a matter for determination in the Originating Summons.
13. The Respondent has not denied that he intends to remove the applicant from the land which land is currently registered in the name of the Respondent. An order of prohibition is meant to protect the records of the particular land. In the case of *Dorcas Muthoni & 2 Others vs Michael Ileri Ngari (2016) e KLR*, the Court held that: -

“ An order of inhibition issued under Section 68 of the *Land Registration Act*, is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed of. The Court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial.”

14. I find that in the circumstances of the case, it is in the interest of justice that the status quo on the ground and the records of the suit land currently prevailing be preserved pending hearing and determination of the Originating Summons. The status quo is that the applicant is in occupation of the suit land and that the land is registered in the name of the Respondent.



15. The application is therefore allowed as follows:

- a. Pending hearing and determination and the main suit herein, an order of temporary injunction is hereby granted restraining the Respondent by himself, his servants or agents from evicting the applicant from and/or interfering in any way with the applicant's occupation of land parcel registration number KAKAMEGA/BUGONDA/1744 measuring 0.24Ha.
- b. An order of prohibition is hereby issued to be registered against land parcel registration number KAKAMEGA/BUGONDA/1744 measuring approximately 0.24Ha prohibiting the registration of any transactions in respect of the said parcel of land pending hearing and determination of the suit.
- c. Costs of the application to abide the main suit.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 13TH DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi - Court Assistant.

Obwatinya for the Plaintiff/Applicant

Respondent present in person.

