



**Ondaba (Suing as The Legal Representative of the Estate of Billiah Kemunto  
Ondaba - Deceased) v Kemunto (Enviromental and Land Originating  
Summons E001 of 2025) [2025] KEELC 1244 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1244 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2025**

**M SILA, J  
MARCH 13, 2025**

**BETWEEN**

**MARITA ONDABA [SUING AS THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF BILLIAH KEMUNTO ONDABA - DECEASED] ..... APPLICANT**

**AND**

**CALLEN KEMUNTO ..... RESPONDENT**

**RULING**

(Application for injunction; applicant filing suit for adverse possession and seeking an injunction; suit land subsequently transferred to a third person before the application can be heard; leave to amend given to join the current proprietor but no amendment done; application for injunction serving no purpose as the respondent is no longer registered proprietor of the suit land; failure to amend despite opportunity being given renders the suit unmaintainable as the respondent no longer owns the suit land; suit struck out)

1. The suit herein was commenced through an Originating Summons filed on 10 January 2025 by the applicant against Callen Kemunto as the sole respondent. In the Originating Summons, it is pleaded that Callen Kemunto is the registered proprietor of the land parcel Nyaribari Chache/B/B/B/ Boburia/3468, holding the property in trust for some four named persons, most probably her children. It is pleaded that the respondent obtained registration after her husband Peter Kimori Maranga died. It is elaborated that Peter Kimori Maranga purchased the suit land through a public auction on 13 May 2005 upon exercise of a chargee's power of sale. The chargor was Marita Ondaba (now deceased) who happened to be the father of the applicant and the husband of Billiah Kemunto Ondaba (deceased), whose estate the applicant represents. It is averred that Marita Ondaba died on 14 February 2002 and since his death the suit land was utilized and managed by Billiah Kemunto Ondaba. The suit land is described as comprising of six two bedroomed rental houses, two single rooms, one toilet and one



bathroom, which are let out to tenants and the rent thereof was being collected by Billiah before her demise. It is contended that despite the sale and transfer of the suit land to Peter Kimori Maranga in 2005, Billiah continued being in possession and collecting rent on the property until her death in 2020, after which the applicant took over its management. This was until 13 November 2024 when the tenants were served with a notice to vacate the premises by 14 February 2025. Another notice was subsequently issued on 23 December 2024 demanding that they vacate by 31 January 2025. He thus moved to court vide the Originating Summons seeking orders that the estate of the late Billiah has acquired title through adverse possession.

2. Together with the Originating Summons, there was filed an application of even date seeking orders of injunction against the sole respondent. It is that application which is the subject of this ruling.
3. When the application first came before me on 13 January 2025, I ordered the status quo obtaining to be maintained until 3 March 2025 when the application was to be heard inter partes.
4. Subsequently the applicant filed an application dated 27 January 2025, complaining that the respondent has violated the order of injunction, inter alia by transferring the suit land to one Fred Omai Ondima and he wished to cite them for contempt. Within that application the applicant also sought an order to join the said Fred Omai Ondima as a party to the case as he was now the current registered proprietor. That application came up for inter partes hearing on 12 February 2025 when parties agreed that the application could be abandoned and the status quo be maintained. I marked the application as settled on that basis. I also gave the applicant liberty to amend the Originating Summons to join the current registered proprietor as a party.
5. It will be recalled that the present application dated 10 January 2025 was still pending and had an inter partes hearing date of 3 March 2025. It did come up on 3 March 2025 and I encouraged parties to try and agree and have the case mentioned on 10 March 2025. On 10 March 2025, Mr. Gichaba was present for the applicant and Mr. Nyambati was present for the respondent. They both said that they could not agree. Mr. Nyambati on his part submitted that it was not possible to agree since the property was now in the hands of a third person who was not a party to the litigation. He submitted that his client is no longer interested in the property. Mr. Gichaba's argument was that the property changed hands after the suit had been filed and the prayers as drawn can apply to any third party. They both asked that I make a ruling on the application.
6. My disposition will be fairly brief.
7. When the application was filed, only Callen Kemunto was a party and she was then the registered proprietor of the suit land. Now the proprietorship has changed. It is pointless for me to issue an order of injunction against her since she is no longer holding title to the suit land. Indeed, in his submissions, Mr. Nyambati did assert that his client no longer has interest in the property. I would have thought that given the fact that the suit land has changed proprietorship, the applicant would proceed and amend the Originating Summons so as to join the current registered proprietor, and if he still wished to pursue an order for injunction, then file a new application.
8. It will be recalled that liberty to amend was given on 12 February 2025, but so far no amendment has been done. I would also have thought that Mr. Gichaba would see that his client's application dated 10 January 2025 has been overtaken by events, given the change in proprietorship, and it would serve no purpose asking for an injunction against a person who does not own the property in dispute and who has stated that she has no interest in it. I am not sure why Mr. Gichaba would want me to make orders against a person who is no longer proprietor and has no interest in the subject matter of the case yet the present proprietor of the suit land is known but no effort has been made to join him to the suit.



9. A court generally makes orders for and against the parties in the case and I am at a loss as to how the applicant would expect that I make orders against the respondent but to apply to another person who is not a party to the case. In this instance I see no purpose issuing an order of injunction against the present respondent as she no longer holds the property and she has stated that she has no interest in it. There would in fact not be demonstrated a prima facie case against her given that she is no longer proprietor of the suit land.
10. The result is that I find no merit in this application and it is hereby dismissed with costs.
11. But that is not all. It will be recalled that I gave liberty to amend the Originating Summons on 12 February 2025. No amendment was done. What does the law say regarding failure to amend after the order if given ? We need to turn to Order 8 Rule 6 which provides as follows :
  6. Where the court has made an order giving any party leave to amend, unless that party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the court to extend the period.
12. When I gave the order to amend on 12 February 2025, no time was specified, meaning that there was 14 days to amend. The 14 days lapsed on 26 February 2025. The above law states that if there is no amendment within that time the order ceases to have effect. The applicant has not asked for any extension of time to amend. The liberty to amend has lapsed and in fact it appears that the applicant for inexplicable reason is keen to keep Callen Kerubo as the sole respondent in the suit and is still seeking orders against her. The result is that we now have a suit for adverse possession that is being maintained against a stranger as the respondent is no longer the registered proprietor of the land. Such suit is not maintainable. I have no option but to strike it out and it is hereby struck out.
13. If the applicant still wants to sue, he needs to sue the correct party. Since he had earlier sued the correct party, the suit is struck out, but with no orders as to costs.
14. With the striking out of the suit all existing orders are hereby spent.
15. Orders accordingly.

**DATED AND DELIVERED THIS 13 DAY OF MARCH 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. Gichaba for the applicant

Mr. Nyambati for the respondent

Court Assistant - Allan

