



**Njau v Chege (Environment & Land Case E019 of 2024)  
[2025] KEELC 3210 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3210 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE E019 OF 2024**

**MN GICHERU, J**

**APRIL 8, 2025**

**BETWEEN**

**PATRICK NG'ANG'A NJAU ..... APPLICANT**

**AND**

**MAXWELL STEPHEN CHEGE ..... RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 27-8-2024. The motion which is by the Applicant is brought under Articles 40 and 260 of *the Constitution* of Kenya, Section 28(h) of the *Land Registration Act*, Section 38 of the *Limitation of Actions Act*, Orders 37 rule 7 and 40 rule 2 of the *Civil Procedure Rules* and all other enabling provisions of the law.
2. The motion seeks the following residual orders.
  2. That pending the hearing and determination of this suit, this Court be pleased to issue a temporary injunction restraining the Respondent herein, his servants, agents and/or persons acting under their authority from interfering, evicting, trespassing, taking possession, selling, transferring and/or in any manner dealing with the Applicant's plot measuring 50X100 feet within the property known as L.R. No. Loc. 1/Mugumoini/234, suit land.
  3. That pending the hearing and determination of the originating summons herein, this Court be pleased to issue a restraining order against the Respondent by himself, his servants, agents, or any other person from evicting, harassing, selling, offering for sale, advertising, alienating, disposing, taking possession, leasing, letting, charging or otherwise interfering with all parcel of land measuring 50x100 within the suit land.
  4. An order of permanent injunction to restrain the Respondent, his servants, agents and/or persons acting under their authority from interfering, evicting, trespassing, taking possession,



selling, transferring, and/or dealing with the Applicant's parcel of land measuring 50x100 feet within the suit property.

5. That costs be awarded to the Applicant.
3. The motion is based on eight (8) grounds and it is supported by an affidavit sworn by the Applicant dated 27-8-2024. It has seven(7) annexures. The gist of the motion is as follows. Firstly, the Applicant is in occupation of the 50x100 parcel of land the he occupies. Secondly, there is a family home and an eatery on the land. There is also some farming. Thirdly, the occupation by the Applicant has been long and uninterrupted and dates back to the year 1987. Fourthly, on 30-7-2024, the Respondent served the Applicant with a letter asking him to vacate the land. Fifthly, on 12-8-2024 the area chief summoned the parties seeking to settle the matter amicably. The Respondent did not respond to the Chief's summons. Sixthly, the Respondent has actualized his threats of evicting the Applicant by excavating a road using an excavator. This has denied the Applicant access to the property forcing him to construct a new gate to access his homestead. Seventhly, on 2-8-2024 the Respondent threatened the Applicant with bodily harm if he does not vacate the land. This resulted in a report being made to the police and this has caused friction and acrimony between the parties. For the above reasons, the Applicant prays for the orders in paragraph (1) above.
4. The motion is opposed by the Respondent who has filed two affidavits dated 4<sup>th</sup> and 17<sup>th</sup> September respectively. The first affidavit is by the Respondent himself while the second one is by one Simon Mburu Ng'ang'a who is a brother to the Applicant. In summary, the reply is as follows. Firstly, the Applicant is a nephew to the Respondent. The Applicant's mother is a sister to the Respondent. Secondly, the Respondent is the registered owner of the suit land. Thirdly, the Respondent had given the Applicant's mother a portion of land measuring 80ftx80ft to cultivate. The sister died in 2018 and the Applicant then took possession of the portion which he now wants to grab from the Respondent. Fourthly, the Applicant's father is alive and owns land where the Applicant can claim.  
  
Finally, no case of adverse possession has been made out because the Respondent only helped his sister and the Applicant now uses force to claim land which he is not entitled to. For the above and other reasons, he prays for the dismissal of the motion dated 27-8-2024.
5. Counsel for the parties filed written submissions dated 7-11-2024 and 10-2-2025 respectively. They identified the following issues.
  - i. Whether the Applicant is entitled to the prayers in the notice of motion dated 27-8-2024.
  - ii. Whether the Respondent was served with the pleadings.
  - iii. Whether the Applicant deserves costs and interest at Court rates for this application.
  - iv. Whether a case for adverse possession has been made out.
6. I have carefully considered the motion dated 27-8-2024 in its entirety including the grounds, the affidavit in support, the affidavits in reply, the written submissions and the law cited therein. I make the following findings on the issues raised.
7. Starting with the fourth issue, I find that it is premature at this interlocutory stage to determine whether a case for adverse possession has been made out. Such a determination will be made at the conclusion of this case. Right now, the case is still at its infancy, so to speak. The pleadings are not closed and all the evidence is not yet filed. There is even an allegation that the originating summons has not been served.
8. As for the second issue, it is also premature to say whether the Respondent was served with the originating summons. It is said that there is an affidavit of service on record. I have not seen the said



affidavit. The respondent denies service. It is only after seeing the affidavit of service that I can begin to consider whether there was proper service on the Respondent.

9. It is my view that the first issue is what goes to the core of the motion dated 27-8-2024. All the three main prayers seek orders of injunction. For an order of injunction to issue, an Applicant must satisfy the three conditions set out in the case of *Giella Vs. Cassman Brown (1973) EA 358*. These conditions are,

1. a prima facie case with a probability of success,
2. irreparable harm that cannot be adequately compensated by an award of damages and
3. if the Court is not sure, it should look at the balance of convenience.

Applying the test in the famous case to this case, I find that it is not disputed that the Applicant is in occupation of part of the suit land and he has buildings on the land. I find that this possession is evidence of a prima facie. I will not talk about probability of success because there are many unknowns as of now. Secondly, I find that evicting the Applicant before the conclusion of the case will occasion him great loss. Since the occupation has been long, let him occupy the land until the final orders are issued at the conclusion of the land. Finally, the balance of convenience tilts in favour of the Applicant.

10. A look at the three main prayers has to me been hairsplitting. I do not see much difference between prayers 2 and 3. While one seeks an injunction pending the hearing and determination of this suit, the other seeks more or less similar orders pending the hearing and determination of the originating summons. Yet this suit has been commenced by way of originating summons. Therefore, for the purposes of this case, there is no difference between the word “this suit” and “originating summons”. I think that the prayers are repetitive and verbose.

I have no doubt that prayer 4 cannot be allowed because it seeks an “order of permanent injunction” This cannot happen at the interlocutory stage. I am also sure that costs should be eventually awarded to the successful litigant. At this early stage, we do not know who will be the successful party.

11. In conclusion and for the above stated reasons, I allow the notice of motion dated 27-8-2024 in terms of prayers 2 and 3, if they are asking for dissimilar reliefs. Costs in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 8<sup>TH</sup> DAY OF APRIL, 2025.**

**M.N. GICHERU**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant’s Counsel – Selestine Njagi

Respondent’s Counsel – Mr. Karuga Wandai

