



**Lelei v Kimeto (Environment & Land Case 1 of 2024)  
[2025] KEELC 3191 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3191 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE 1 OF 2024  
GMA ONGONDO, J  
APRIL 7, 2025**

**BETWEEN**

**ELIZABETH JEPKEMBOI LELEI ..... PLAINTIFF**

**AND**

**MILKA JEROP KIMETO ..... DEFENDANT**

**RULING**

1. The instant ruling is in respect of an application by way of Notice of Motion dated 21<sup>st</sup> January 2025 by the plaintiff/applicant through Duncan Tallam and Company Advocates for orders infra;
  - a. Spent
  - b. Spent
  - c. This honourable court be pleased to issue temporary order of injunction restraining the respondent/defendant, her children, husband, servants, agents, relatives and/or assigns from any way entering into, ploughing/tilling and/or dealing in any manner with the suit land parcel number Nandi/Ndulele/983 and Nandi/Ndulele/426 (the suit parcels of land) pending hearing and determination of the appeal herein.
  - d. The OCS, Kibiyet Police Station within whose jurisdiction the suit land is situate be directed to ensure compliance with the above court orders.
  - e. Costs of this application be provided for.
2. The application is founded upon six grounds indicated on the face thereof as well as a Supporting Affidavit of fourteen paragraphs sworn by Elizabeth Jepkemboi Lelei on even date. In summary, it is the lamentation of the applicant that she is the registered owner of the suit parcels of land has been in occupation and use of the same. That on 20<sup>th</sup> January 2025, the respondent illegally trespassed onto the suit parcels of land and began ploughing/tilling using a tractor without the applicant's consent



- and/or knowledge. That she has a prima facie case with a chance of success. That she is likely to suffer irreparable loss unless the actions of the respondent are stopped.
3. The application was opposed by way of a Notice of Preliminary Objection, Grounds of Opposition and a Replying affidavit, all dated 6<sup>th</sup> February 2024.
  4. In the Notice of Preliminary Objection hereinabove referenced, the respondent contended that the matter between the parties is time barred and offends the provisions of Sections 7, 13, 17, 18, 26, 31, 38 and 39 of the Limitation of Actions Act, Chapter 22 Laws of Kenya.
  5. In the Grounds of Opposition and Replying Affidavit sworn on even date, the respondent averred that together with her husband, they have been tilling the suit parcels of land continuously and uninterrupted since 1988 to date. That this Honourable Court has no jurisdiction to entertain this suit since its jurisdiction has been ousted by Sections 7 and 18 the Limitation of Actions Act. That the application is seeking for veiled eviction orders through mandatory injunctive orders. Thus, she prayed that the instant application be struck out or dismissed with costs.
  6. The applicant filed a Supplementary affidavit sworn on 25<sup>th</sup> February 2025 in response to the respondent's Replying Affidavit wherein she reiterated the averments in her supporting affidavit. She averred that the respondent is not in occupation and use of the suit parcels of land as alleged.
  7. Originally, the suit was instituted at Kabiyet Magistrates' Court. Pursuant to orders issued herein on 9<sup>th</sup> May 2024, it was transferred to this court for hearing and determination.
  8. Hearing of the application proceeded by way of written submissions pursuant to this court's directions of 12<sup>th</sup> February 2025.
  9. The applicant's counsel filed submissions dated 4<sup>th</sup> March 2025 and submitted that the applicant has established a prima facie case with likelihood of success she has been in occupation of the suit parcels of land since the year 1977 and is the sole registered proprietor thereof. That the applicant risks suffering irreparable harm if the orders sought herein do not issue since the suit parcels of land are the basket of her livelihood as she uses the same for her subsistence farming (maize, beans and potatoes), commercial farming (sugarcane and tea) as well as rearing her cows. That the balance of convenience tilts in favour of the applicant. That the parties are close relatives and family members and therefore for avoidance of havoc between the siblings and family members herein, the Preliminary objection raised herein would not apply and the same ought to be dismissed. That an order preserving the subject matter herein ought to be issued henceforth. Reliance was placed on various authoritative pronouncements, including *Giella vs Cassman Brown Ltd. (1973) EA 358* and *Mrao Ltd. vs First American Bank of Kenya Ltd. & 2 others (2003) eKLR*, to fortify the submissions.
  10. The respondent's Counsel, Rotich, Langat and Partners Advocates, filed submissions dated 27<sup>th</sup> February 2025 and submitted that the applicant's case is statute barred under Sections 7, 13, 17, 18, 26-31, 38 and 39 of the Limitations of Actions Act, Chapter 22 Laws of Kenya, since the respondent, who is a daughter-in-law of the applicant, has been residing on the suit parcels of land since 1988. That the applicant is trying to evict the applicant from the suit parcels of land through this application. That the application has not met the threshold for grant of the orders sought therein. Thus, counsel urged the court to dismiss the instant application. In the alternative, Counsel prayed that this Honourable Court do issue status quo orders as recorded by parties through consent at Kabiyet Law Courts and which have been in place since 28<sup>th</sup> March 2024. Counsel relied on various authoritative pronouncements including *Peter Ndambu Nzikali & another v Onesmus Ndambu Musau [2015] eKLR*, *Kadzo Charo v Alex Nzai Dzombo [2019] eKLR*, among others, to buttress the submissions.



11. I have duly considered the application, the response thereto and the parties' respective submissions. The principal issues for determination boil down to:
  - a. Whether the suit is time barred?
  - b. Depending on the outcome in (a) above, whether the applicant has met the threshold for grant of an injunction order?
  - c. Who should bear the costs of this application?
12. On the first issue, the respondent contended that the matter between the parties is time barred and offends the provisions of Sections 7, 13, 17, 18, 26, 31, 38 and 39 of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya. In response thereto, the applicant stated that the parties are close relatives and family members and therefore for avoidance of havoc between the siblings and family members herein, the Preliminary objection raised herein would not apply and the same ought to be dismissed.
13. I note from the application that the applicant indicated the date when the cause of action arose as 20<sup>th</sup> January 2025. She stated that as the date when the respondent illegally trespassed onto the suit parcels of land and began ploughing/tilling using a tractor without the applicant's consent and/or knowledge. In the plaint dated 20<sup>th</sup> March 2024, the plaintiff/applicant stated at paragraph 4 that the acts of trespass by the respondent occurred on or about 24<sup>th</sup> February 2024. Further, the applicant has averred that she is in occupation and use of the suit parcels of land. Clearly, the issue of possession and the period thereof is disputed.
14. In *Mukhisa Biscuit Manufacturers Ltd. vs. West End Distributors Ltd.* [1969] E.A. 696 – the Court of Appeal stated that:

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”
15. I subscribe to the Court of Appeal decision in *Oraro v Mbaja* [2005] KEHC 3182 (KLR), where it was observed in part that;

“...A “preliminary objection”, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed...”
16. Indeed, the preliminary objection is not based on a pure point of law since the essential claims therein are the subject of dispute. Thus, the same is unmerited and this court cannot find the instant suit time-barred under the *Limitation of Actions Act* (supra) in the circumstances.
17. Regarding the second issue, an injunction is an equitable and discretionary remedy; see Order 40 of the Civil Procedure Rules 2010 and *National Bank of Kenya Limited -vs- Shimmers Plaza Limited* [2009] eKLR.



18. The principles of injunctions were enunciated in the Giella case (supra) and as was reiterated in the case of Nguruman Limited vs Jan Bonde Nielsen and 2 others (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application, the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”

19. Further in the case of Hutchings Biemer Ltd v Barclays Bank of Kenya Ltd & 2 others [2006] eKLR, the Court of Appeal observed in part that:

“...In our view, injunctive orders are meant to preserve property and maintain the status quo...”

20. So, is the instant application meritorious?

21. On one hand, the applicant averred that she is the registered owner of the suit parcels of land has been in occupation and use of the same. That the respondent illegally trespassed onto the suit parcels of land and began ploughing/tilling using a tractor without the applicant’s consent and/or knowledge. That she has a prima facie case with a chance of success and is likely to suffer irreparable loss unless the actions of the respondent are stopped.

22. On the other hand, the respondent contended that the instant case is statute barred under Limitations of Actions Act since she has been residing on the suit parcels of land since 1988. That the applicant is trying to evict her from the suit parcels of land through this application. That the application has not met the threshold for grant of the orders sought therein. That in any event, status quo orders were recorded by parties through consent at Kabiyet Law Courts on 28<sup>th</sup> March 2024 and have been in effect since then.

23. Taking into account the application, the response thereto as well as the annexures and the rival submissions, it is my considered view that the threshold for an interim preservation order under Section 13 of the Environment and Land Court, 2015 (2011), has been met. Undoubtedly, status quo order is envisaged under the said statutory provision.

24. It is trite law that status quo order is meant to preserve the property in question pending the outcome or termination of the case; see Ogada-vs-Mollin (2009) KLR 620.

25. I bear in mind that status quo orders were recorded herein on 28<sup>th</sup> March 2024. The same have not been set aside and remain in force. Therefore, I adopt the same as an order of this court so as to preserve the substratum of this suit. Additionally, no party shall sell, charge, transfer, sub divide, alienate, dispose of, fence off or in any manner develop the suit parcels of land pending the hearing and determination of the suit.

26. In the premises, the instant application is hereby disallowed.



27. For clarity, the interim preservation orders issued by the subordinate court on 28<sup>th</sup> March 2024 as well as the additional orders as stipulated in paragraph 25 hereinabove to prevail over the suit parcels of land.
28. Costs of the application to be in the cause.
29. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 7<sup>TH</sup> DAY OF APRIL 2025.**

**G. M. A ONG'ONDO**

**JUDGE**

Present;

Mr. Tallam D., Learned Counsel for the plaintiff/applicant

Mr. Mabalalu holding brief for Mr. Rotich, Learned Counsel for the defendant/respondent

Walter, Court Assistant

