



Matara v Meroka & 2 others (Environmental and Land Originating Summons E006 of 2024) [2025] KEELC 3084 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3084 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2024
DO OHUNGO, J
APRIL 3, 2025

BETWEEN

EDWIN MBAKA MATARA PLAINTIFF

AND

MOCHUMBE OSINYO MEROKA 1ST DEFENDANT

MARY MOCHUMBE 2ND DEFENDANT

LAND REGISTRAR NYAMIRA COUNTY 3RD DEFENDANT

RULING

1. The Plaintiff moved the Court through Originating Summons (OS) dated 16th October 2024, seeking to be declared to have acquired title to the parcel of land known as Manga Settlement Scheme/964 (the suit property) by adverse possession and an order that he be registered as the sole proprietor of the suit property. Together with the OS, the Plaintiff filed Notice of Motion dated 16th October 2024, which is the subject of this ruling.
2. The following orders are sought in the Notice of Motion:
 1. [Spent]
 2. That the Honourable Court be Pleased to issue an order Prohibiting and restraining all the Respondents, their agents or any other from conducting any transactions on Land Parcel Reference Number Manga Settlement Scheme/964
 3. That the Honourable Court be pleased to issue conservatory and/or interim orders staying and/or suspending and/or halting the further dealings on Land Parcel Reference Number Manga Settlement Scheme/964.



4. That the Honourable Court be Pleased to issues an Order temporarily Restraining/Barring the 1st Respondent, 1st and 2nd Respondent or their agents, from entering or interfering with Land Parcel Reference Number Manga Settlement Scheme/964.
5. That the costs of this application be homme by the Respondents.
3. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Plaintiff. He deposed that he had lived on the suit property since the year 2006 and that he lives there with his wife and children. He annexed photographs and added that the First and Second Defendants are the registered proprietors of the suit property.
4. The First and Second Defendants opposed the application through a Replying Affidavit sworn by the Second Defendant. She deposed that she is the First Defendant's wife and that she acquired the suit property together with the First Defendant from one Jerusha Nyatichi Onsongo (deceased) on 23rd July 2022 and that they were issued with title deed on 3rd August 2022. That the suit property was vacant when they inspected it prior to purchase and that the suit property originates from parcel number Borabu Manga Settlement Scheme 277 which was owned by one Zakaria Onsongo who is the Plaintiff's Grandfather. That the suit property shares a boundary with parcel number Manga Settlement Scheme/1347 which belongs to Christopher Matara Onsongo the Plaintiffs father, and which equally originates from parcel number Borabu Manga Settlement Scheme 277.
5. The Second Defendant further deposed that the Plaintiff has a home on Manga Settlement Scheme/1347 and that after realising that the First and Second Defendants had acquired the suit property, the Plaintiff and his family trespassed into the suit property and cultivated it leading to the Second Defendant to issue a notice to vacate dated 5th December 2022. She also deposed that there was a dispute in court which led to a ruling on 14th August 2014 and annexed a copy of ruling delivered on 15th August 2014 in CM Misc. Civil Application No. 10 of 2014 (Nyamira).
6. The Second Defendant also deposed that Christopher Matara Onsongo the Plaintiffs father filed HCCHRPET E010 of 2024 (Nyamira) against Zakariah Onsongo, the Second Defendant herein and others seeking cancellation of titles in respect of Manga Settlement Scheme/193 and 194 which were the initial subdivisions of Borabu Manga Settlement Scheme 277 as well as cancellation of subsequent titles and that the said matter is pending and was scheduled for mention on 25th January 2025. She also stated that the Plaintiff had destroyed a fence which she erected around the suit property thereby making it difficult to tell the boundary between the suit property and Manga Settlement Scheme/1347. She added that the Plaintiff is not therefore deserving of the orders sought.
7. The First Defendant also swore and filed a Replying Affidavit whose contents are similar to those in the Second Defendant's affidavit.
8. The Plaintiff swore a filed a further affidavit in which he denied that he entered the suit property with the permission of Zakariah Onsongo and stated that the First and Second Defendants obtained title fraudulently. That in HCCHRPET E010 of 2024 (Nyamira), he is seeking nullification of fraudulent subdivision of Manga Settlement Scheme 277.
9. The application was canvassed through written submissions. The Plaintiff filed submissions dated 22nd October 2024 while the First and Second Defendants filed submissions erroneously dated 18th October 2025. The First and Second Defendants' said submissions were filed on 20th January 2025. The Third Defendant neither responded to the application nor filed submissions.
10. I have considered the application, the affidavits and the submissions. The sole issue for determination is whether the orders sought in the Notice of Motion should issue.



11. The Plaintiff is seeking an interlocutory injunction both as ordinary injunction and as a prohibitory order. An interlocutory injunction is an equitable remedy which is issued at the discretion of the court, which discretion must be exercised judicially. It is not a remedy that is issued routinely. In that regard, it is useful to refer to Halsbury's Laws of England 4th Ed Vol 24 Para 953 where it is stated:

“On application for an injunction in aid of a plaintiff's alleged right, the Court will usually wish to consider whether the case is so clear and free from objection on equitable grounds that it ought to interfere to preserve property without waiting for the right to be finally established. This depends upon a variety of circumstances, and it is impossible to lay down any general rule on the subject by which the Court ought in all cases to be regulated, but in no case will the Court grant an interlocutory injunction as of course.”

12. The principles applicable while considering an application for interlocutory injunction are firstly, that the applicant must establish a prima facie case with a probability of success. Secondly, even if he succeeds on that first limb, an injunction will not issue if damages can be an adequate compensation. Lastly, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience.

13. The Court of Appeal considered these principles in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR where it stated:

“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 stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

14. As to what constitutes a prima facie case, the Court of Appeal defined it in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR as:

“... a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter... [it] is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”

15. The Plaintiff's case is that he has acquired title to the suit property through adverse possession. In his submissions, he has literally argued his adverse possession claim. The First and Second Defendant have also dwelt on the issue in their submissions.



16. At this stage, all that is required is to discern if a case for an injunction has been made. I will be careful to avoid a premature determination of the dispute. Suffice it to state the general principles.
17. To succeed in his adverse possession quest, the Plaintiff will have to prove, at the trial stage, the ingredients of adverse possession. A party claiming adverse possession must assert hostile title in denial of the title of the registered proprietor. The process must start with a wrongful dispossession of the rightful owner and the proper way of assessing proof of adverse possession is whether the title holder has been dispossessed or has discontinued his possession for the statutory period of 12 years, as opposed to whether the claimant has proved that he or she has been in possession for 12 years. The party who claims adverse possession must demonstrate the date he came into possession, the nature of his possession, whether the fact of his possession was known to the registered proprietor and that the possession was open and undisturbed for the requisite 12 years. See *Richard Wefwafwa Songoi v Ben Munyifwa Songoi* [2020] eKLR.
18. From the material on record, there is no dispute that the First and Second Defendants are the registered proprietors of the suit property. It is further not contested that the suit property was created following subdivision of parcel number Borabu Manga Settlement Scheme 277 which was owned by one Zakaria Onsongo who is the Plaintiff's Grandfather. The Plaintiff is a son to Christopher Matara Onsongo who is the registered proprietor of parcel number Manga Settlement Scheme/1347. The said parcel also traces its origins to parcel number Borabu Manga Settlement Scheme 277.
19. It is clear to me that at the heart of this matter is a dispute within the family of Zakaria Onsongo as to whether he was entitled to parcel number Borabu Manga Settlement Scheme 277. His decision to subdivide the said parcel and to transfer the subdivisions as he did became the subject of court cases in CM Misc. Civil Application No. 10 of 2014 (Nyamira) and HCCHRPET E010 of 2024 (Nyamira). The Plaintiff's father is a party in the said cases. A reading of the Plaintiff's affidavits leaves no doubt that the Plaintiff is strongly in support of his father's position. He has in fact taken the position that the subdivision of Borabu Manga Settlement Scheme 277 into Manga Settlement Scheme/193 and 194 and the subsequent titles including the suit property was fraudulent. An allegation of fraudulent title and adverse possession do not sit well in the same suit since a party claiming adverse possession must acknowledge the title of the registered proprietor.
20. I am not persuaded that the Plaintiff has disclosed a prima facie case. I see no valid reason to burden the First and Second Defendant with injunctions in the manner sought. I have endeavoured to be frugal with any aspects that go to the merits of the case. In the absence of proof of prima facie case, I need not enquire into the limbs of irreparable injury and balance of convenience.
21. In view of the foregoing, I find no merit in Notice of Motion dated October 16, 2024 and I therefore dismiss it with costs to the First and Second Defendants.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 3RD DAY OF APRIL 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Okundi for the Plaintiff

No appearance for the First and Second Defendants

No appearance for the Third Defendant

Court Assistant: B Kerubo

