



REPUBLIC OF KENYA



KENYA LAW
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**Barua & 4 others v Mati & 6 others (Environmental and Land Originating
Summons E001 of 2025) [2025] KEELC 4063 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4063 (KLR)

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

BM EBOSO, J

MAY 22, 2025

BETWEEN

FLORA KATHAKWA BARUA 1ST PLAINTIFF
BASILIO KIMATHI 2ND PLAINTIFF
BERITA MUKWAMUNDA 3RD PLAINTIFF
REBECCA MUKAMI 4TH PLAINTIFF
SILVERIA KANYUA 5TH PLAINTIFF

AND

DANIEL MUTUGI MATI 1ST DEFENDANT
ENDELINA GAKOMOTI MATHEW 2ND DEFENDANT
GEDION KIRAI MATI 3RD DEFENDANT
TABITHA KAGENDO KAMENYA 4TH DEFENDANT
JAMES MWANGI 5TH DEFENDANT
JOSHUA KINOTI MATI 6TH DEFENDANT
MICHIKINE HOLDING LIMITED 7TH DEFENDANT

RULING

1. The plaintiffs initiated this suit through an originating summons dated 16/1/2025. They invited this court to determine the following questions:

1. Whether land parcel number S.Tharaka/Tunyai "A"/15 measures 19 Ha.



2. Whether the defendants are the registered owners of land parcel number S.Tharaka/Tunyai “A”/15.
 3. Whether the plaintiffs have been in continuous, peaceful possession of the whole of land parcel number S.Tharaka/Tunyai “A”/15 with the knowledge of the defendants for a period exceeding 12 years.
 4. Whether the plaintiffs have developed the whole of land parcel number S.Tharaka/Tunyai “A”/15.
 5. Whether the plaintiffs are entitled to the orders sought.
 6. Who should pay costs of this suit.
2. The plaintiffs urged the court to make a declaration that they have obtained title to land parcel number S.Tharaka/Tunyai “A”/15 by the doctrine of adverse possession under the *Limitation of Actions Act*.
 3. Subsequent to that, the plaintiffs brought a notice of motion dated 28/1/2025 seeking an interlocutory injunctive order restraining the defendants against interfering with the current status quo by stopping the defendant from entering into, trespassing on, encroaching on or interfering with the plaintiffs’ peaceful occupation of land parcel number S.Tharaka/Tunyai “A”/15 (hereinafter referred to as “the suit land”) pending the hearing and determination of this suit. The said application is one of the two applications that all for determination in this ruling.
 4. The second application falling for determination in the ruling is the notice of motion dated 7/3/2025, brought by the 7th defendant, Machikine Holdings Limited, against the 5th plaintiff, Silveria Kanyua. Through the application, the 7th defendant seeks an interlocutory injunction restraining the 5th plaintiff together with her agents/servants against entering or developing the suit land or interfering with the 7th defendant’s possession of the suit land. As an alternative interlocutory plea, the 7th defendant prayed for an order of eviction against the 5th plaintiff. They also prayed that the Officer Commanding Police Station, Tunyai, be directed to supervise the eviction. Because the two parallel applications seek similar injunctive reliefs relating to the same suit property, they will be disposed contemporaneously.

Plaintiff’s Application dated 28/1/2025

5. The plaintiffs’ application was premised on the grounds outlined in the motion and in the supporting affidavit sworn by Basilio Kimathi (2nd plaintiff) on 28/1/2025. It was canvassed through written submissions dated 6/3/2025, filed by M/s L. Kimathi Kiara & Company Advocates.
6. The case of the plaintiffs is that they have occupied the suit land “since time immemorial” with the full knowledge of the successive proprietors of the land, and that their occupation of the suit land has been for a period exceeding 12 years. They have developed permanent homes on the suit land. They have been tilling and cultivating the land. They have installed piped water on the land, and they have fenced the entire suit land.
7. The plaintiffs contend that their title to the suit land having crystalized under the doctrine of adverse possession, they initiated this suit seeking vesting orders under the *Limitation of Actions Act*. It is their case that upon serving the defendants with pleadings, agents of the 7th defendant went to the suit land on 27/1/2025 and “attempted to trespass” on the land but they repulsed them. They are apprehensive that unless a restraining order is issued, the defendants will enter the suit land by force and evict them. Through grounds of opposition dated 19/3/2025, they termed the 7th defendant’s application dated 7/3/2025 an abuse of the process of the court and sub-judice.



7th Defendant's Application dated 7/3/2025 and 7th Defendant's Case on the two Applications.

8. In response to the originating summons, the 7th defendant filed a replying affidavit dated 5/2/2025, sworn by Mike Njeru. In addition, the 7th defendant filed an affidavit sworn on 5/2/2025 by Stephen Mugambi Marundu. In response to the plaintiff's application dated 28/1/2025, the 7th defendant filed a replying affidavit dated 14/2/2025 sworn by Stephen Mugambi Marundu and a second affidavit dated 14/2/2025 sworn by Nicholas Ng'aNg'a Mbugua.
9. In addition to the response to the originating summons, the 7th defendant filed a counterclaim dated 7/3/2025 against the 5th plaintiff. He also filed the application dated 7/3/2025 in which he sought the interlocutory injunctive orders outlined in paragraph 4 of this ruling. Jointly with the 2nd – 6th defendants, the 7th defendant filed written submissions dated 21/3/2025 on the plaintiffs' application dated 28/1/2025. In addition, the 7th defendant filed written submissions dated 1/4/2025 on their application dated 7/3/2025.
10. The case of the 7th defendant is that they are the registered proprietors of the suit land. They purchased the suit land from the beneficiaries of the estate of the late Mati Mukera who was the father of the 1st to the 6th defendants. At the time the beneficiaries of the said estate sold the land to the company, they had obtained a certificate of confirmation of grant from Meru High Court in Succession Cause No 65 of 2007.
11. The 7th defendant contends that during the negotiations that preceded the purchase, its director, Mike Njeru, personally visited and inspected the suit land and confirmed that it was vacant. They add that they never saw any building or any kind of physical development on the suit land and that they established with certainty that there were no persons living on or in occupation of the suit land.
12. The 7th defendant contends that on 27/1/2025, its director, Mike Njeru, made a site visit to the suit land to establish the basis of the plaintiffs' claim and at that point, they discovered that the 5th plaintiff had built a mud house on the land. The 7th defendant adds that the 5th plaintiff claimed that the land belonged to her deceased father. They state that the 5th defendant is a neighbour who lives on an adjacent piece of land.
13. The 7th defendant contends that no person had lived on the suit land until recently when the 5th plaintiff built the mud house on the land in a scheme to lodge a claim for adverse possession. They add that having obtained their title to the suit land in June 2024, the plaintiffs' claim for orders of adverse possession against them is unsustainable because it fails to meet the 12 year threshold. It is their case that the plaintiffs' plea for an interlocutory injunction is untenable and legally misguided. They contend that the plaintiffs do not stand to suffer any prejudice because they have their own land adjacent to the suit land.

4th Defendant's Case

14. The 4th defendant opposed the plaintiffs' application through a replying affidavit dated 14/2/2025. She states that she is a daughter-in-law to the late Mati Mukera who lived at Nkondi which is 42 kilometers from Tunyai. In 1997, the late Mukera instructed her and her husband to look after the suit land because he could not personally do so due to the distance. She tilled the land between 1997 and 2017. She states that the plaintiffs are their neighbours at Tunyai, adding that the 2nd plaintiff is a Chief in a neighbouring location, Gakurungu. She states that between 1997 and 2017 when she tilled the suit land, no one lived on the land. She was surprised when she went to the suit land in January 2025 and found the 5th plaintiff's newly built mud house on the suit land. She adds that allegations of continuous and uninterrupted use and occupation of the suit land by the plaintiffs are falsehoods



aimed at “stealing” the suit land. She states that the 1st plaintiff is mother to the 2nd to 5th plaintiffs and that the late husband to the 1st plaintiff, Cesary Barua, was buried on his land which is adjacent to the suit land and on which all the plaintiffs reside.

5th Defendant’s Case

15. The 5th defendant filed a replying affidavit dated 5/2/2025 in response to the originating summons. Through a subsequent affidavit dated 7/2/2025, he adopted the contents of the preceding affidavit dated 5/2/2025 as his response to the plaintiffs’ application. He reiterated the historical background set out by the 4th defendant and added that no person had lived on or occupied the suit land either during the late Mukera’s lifetime or thereafter. He stated that when he visited the suit land in 2021, there were no structures or physical developments on the land, adding that the plaintiffs are members of the same family living on an adjacent piece of land. He contended that this suit is a scheme by the plaintiffs to steal the suit land.
16. The court has considered the parallel applications that seek injunctive orders. The court has also considered the parties’ respective responses and submissions. The two questions that fall for determination in the two parallel applications are:
 - (i) Whether the criteria for grant of an ordinary interlocutory injunction has been met; and
 - (ii) Whether the criteria for grant of an interlocutory mandatory injunction in form of an eviction order has been met.
17. Do the parallel applications meet the criteria for grant of an ordinary interlocutory injunction? The relevant criteria was outlined by the Court of Appeal for East Africa in the case of *Giella Vs Cassman Brown & Co. Ltd (1973) EA 358*. First, the applicant is required to demonstrate a prima facie case with a probability of success. Secondly, the applicant is required to demonstrate that if the interlocutory injunction is not granted, he would stand to suffer injury that may not be indemnifiable through an award of damages. Thirdly, if the court has doubts on the applicant’s satisfaction of both or either of the above two requirements, the court should dispose the application based on the balance of convenience. Lastly, at the point of disposing the plea for an interlocutory injunction, the court does not make definitive or conclusive pronouncements on the key issues in the dispute.
18. There is no contest that the 7th defendant is the current registered proprietor of the suit land. The plaintiffs contended in their originating summons that they have permanent homes on the suit land. They, however, said nothing about the permanent homes in their application which was filed subsequently. Not a single photograph of their developments on the suit land was exhibited in support of the application.
19. On their part, the 7th defendant contended that the plaintiffs are neighbours residing on an adjacent parcel of land and that the 5th defendant erected a makeshift mud and mabati structure on the suit land immediately prior to initiating this suit, for the sole purpose of advancing the plaintiffs’ claim. They denied the plaintiff’s allegation of occupation of the land from “time immemorial”. They exhibited the report of a property valuer who inspected the suit land on 3/2/2025. There was no rebuttal, by way of evidence, after the 7th defendant exhibited the valuer’s report showing two small newly erected mud and mabati makeshift structures that the 7th defendant contended were erected immediately prior to the filing of the originating summons.
20. Given the above interlocutory evidence, the court has doubts as to whether the plaintiffs have demonstrated a prima facie case of a crystalized title under the doctrine of adverse possession. Similarly, the court has doubts on probable irreparable injury that may be occasioned to the plaintiffs.



21. On the 7th defendant's plea for an ordinary injunction, whereas the 7th defendant has demonstrated that they are the registered proprietors of the suit land, and allege that the 5th plaintiff who has a home on an adjacent parcel entered the suit land immediately prior to bringing this originating summons, they have not told the court why they did not take any immediate legal action at that time to remove the structures.
22. Given the above circumstances, the court takes the view that the two applications should be disposed based on the balance of convenience. Secondly, the court takes the view that any disposal order to be issued should focus on preserving the title and the two existing makeshift and mud structures. Thirdly, the focus of the court should be on disposing the substantive suit expeditiously.
23. Does the application dated 7/3/2025 satisfy the criteria for grant of an interlocutory mandatory injunction? The 7th defendant made an alternative plea for an eviction order. This, in essence, is a plea for an interlocutory mandatory injunction. The criteria for grant of a mandatory injunction at the interlocutory stage of a suit was outlined in the English case of *Locabi International Finance Limited v Agro-Export and Another* (1986) All ER 901 as follows:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff...a mandatory injunction will be granted on an interlocutory application.”
24. For the reasons set out in the preceding paragraphs, it is clear that this is not a straight forward case that would warrant grant of an interlocutory mandatory injunction in form of an interlocutory eviction order. The makeshift mud and mabati structures should remain on the land to abide the determination in this suit.
25. In the end, the two applications dated 28/1/2025 and 7/3/2025 are disposed on the basis of the balance of convenience in the following terms:
 - a. Pending the hearing and disposal of the primary suit and the counterclaim herein, no dealings shall be registered in the land register relating to land parcel number S.Tharaka/Tunyai “A”/15 (the suit land).
 - b. Pending the hearing and determination of this suit, no new structure or new developments shall be erected or carried out on the suit land.
 - c. Pending the hearing and determination of this suit, the two mud and mabati structures exhibited as part of the valuation report by M/s Ni-Light Consultants shall not be demolished or removed.
 - d. Unless extended by the court, the above orders shall lapse on expiry of nine (9) months from today.
 - e. Costs of the two applications shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 22ND DAY OF MAY, 2025.

B M EBOSO [MR]

JUDGE



In the Presence of:

Plaintiffs – No appearance

Defendants - No appearance

Court Assistant – Mr. Mwangi

