



REPUBLIC OF KENYA



KENYA LAW
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**Khisa v Muchanga (Environmental and Land Originating Summons
E027 of 2024) [2025] KEELC 4226 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4226 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E027 OF 2024
EC CHERONO, J
MAY 22, 2025**

BETWEEN

DANIEL KHISA PLAINTIFF

AND

JOB JUMA MUCHANGA DEFENDANT

RULING

1. This ruling arises from the Notice of Motion Application dated 2/12/2024 brought under Section 1A,1B,3 & 3A of the [Civil Procedure Act](#) and Orders 40 & 51 of the Civil Procedure Rules seeking the following orders: -
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That pending the hearing and determination of the substantive suit, this court be pleased to issue a temporary injunction restraining the Defendant/Respondent by himself, their servants, and/or agents from evicting or in any other manner interfering with the Plaintiff/Applicants who occupies 2 full plots measuring 100 feet by 100feet out of land parcel no. E.Bukusu/N.Sangalo/7019 until the suit is heard and fully determined.
 - e. Costs be provided.
2. The application is premised on the grounds apparent on the face of the said application supported by the affidavit of the Applicant sworn on even date. The Applicant deposed that his family has been in open, uninterrupted, peaceful and continuous occupation and use of 2 plots measuring 100 feet by 100 feet out of land parcel no. E.Bukusu/N.Sangalo/7019 (hereinafter referred to as “the suit property”) by virtue of adverse possession since the year 2006. That he has extensively developed the suit property



by establishing a homestead and planted trees. That he was issued with a notice to vacate on or about 21/11/2024 by the Chief, Bukembe Sub-Location despite his long-standing occupation and use of the suit land in a bid to unlawfully defeat his claim for adverse possession. He argued that unless restrained, his family will suffer irreparable loss and damage as they shall be rendered homeless and deprived of their livelihood. He urged the court to grant him the orders sought.

3. Despite being served with the said application, the Respondent did not file any response and when the application came for directions, this Court directed that the same be canvassed by way of written submissions. At the expiry of the timelines given, none of the parties had filed submissions as directed.

Legal Analysis and Decision

I have considered the application and the supporting affidavit as well as the annexure thereto. The main issue for determination in this application is whether the Applicant has established the conditions for the grant of a temporary injunction pending hearing and determination of the suit.

4. The conditions an applicant must establish for the court to grant a temporary injunction were set out in the celebrated case of *Giella V Cassman Brown & Company Ltd* 1973 EA 358 as follows:

“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”

5. In the case of *Mrao V First American Bank of Kenya Limited* (2003) eKLR Bosire JA (as he then was) stated as follows:

“A prima facie case is one 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”

6. The Applicant in his supporting affidavit contends that his family has been in open, uninterrupted, peaceful and continuous occupation and use of the suit property by virtue of adverse possession since the year 2006 and that he has developed the property and established his homestead. In the case of *Nguruman Limited V Jan Bonde Nielsen & 2 Others* (2014) eKLR, the Court held as follows:

“We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini-trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title. It is enough if he can show that he has a fair and bona fide question to raise to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or as otherwise put on a preponderance of probabilities. This means that the court takes the view that on the face of it the applicant’s case is more likely than not to succeed.”

7. I am reminded that while dealing with an interlocutory application for an order of injunction, this court must caution itself from making a final decision at the interlocutory stage. All that an Applicant needs to demonstrate is that he has an arguable case. In the circumstances, I am of the view that the



Applicant has demonstrated that he has a prima facie case or an arguable case. A prima facie case or an arguable case need not necessarily succeed at the main trial.

8. The second condition the Applicant must satisfy the Court is that he shall suffer irreparable loss unless the injunction order is granted. The Applicant has stated that he has extensively developed the suit property by establishing a homestead and planted trees. The Respondent did not controvert those averments given on oath. The letter annexed to the application confirms that indeed the Applicant resides in the suit land and if the conservatory orders sought are not granted, then he stands the risk of being driven out of the suit land before the suit is heard and determined which would result to irreparable loss and this suit would be rendered nugatory because the substratum of the dispute will be lost.
9. Lastly, regarding the balance of convenience, the doctrine of adverse possession is one of the overriding interests on a title to land. As in this case, the purpose of an injunction is to protect the occupancy of the Applicant until the suit is finally heard and determined. It is my considered view that no prejudice will be caused to the Respondent as none has been demonstrated. Therefore, the balance of convenience in my view tilts in favour of the Applicant as he is the one currently in occupation of the suit land where he allegedly resides and derives his livelihood.
10. The upshot of my finding is that the application dated 02nd December 2024 is merited and the same is hereby allowed in the following terms:
 - a. A temporary injunction is hereby granted, restraining the Defendant/Respondent by himself, their servants, and/or agents from evicting or in any other manner interfering with the Plaintiff/Applicants who occupies 2 full plots measuring 100 feet by 100 feet out of land parcel no. E.Bukusu/N.Sangalo/7019 until this suit is heard and fully determined.
 - b. This suit to set down for hearing within one year failing which the orders of injunction issued herein shall lapse.
 - c. The costs of this application shall be costs in the cause.
11. Orders Accordingly.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 21ST DAY OF MAY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Applicant/Advocate-absent
2. Respondent/advocate-absent
3. Bett C/A

