



REPUBLIC OF KENYA



KENYA LAW
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**Korir v Menyiku & 3 others (Environment & Land Case
E001 of 2025) [2025] KEELC 452 (KLR) (11 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 452 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E001 OF 2025
MN MWANYALE, J
FEBRUARY 11, 2025**

BETWEEN

EVERLINE CHEPKURUI KORIR PLAINTIFF

AND

SHANKATI OLE MENYIKU 1ST DEFENDANT

DANIEL PAPAYIO MALEKE 2ND DEFENDANT

LAND REGISTRAR, TRANSMARA WEST 3RD DEFENDANT

HON. ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. The Learned Counsels for the parties herein Mr. Kantai for the Plaintiff/ Applicant and Mr. Onchwangi for the 1st and 2nd Defendant/ Respondent after their oral submissions in respect of the Notice of Motion Application dated 6th January 2025 this afternoon, and in response to an enquiry by the court, confirmed that the 2nd Defendant/Respondent Daniel Papayio Maleke, is in occupation of the suit property and is also the registered owner thereof a fact confirmed by the copy of the green card annexure ECK 2 exhibited by the Plaintiff/ Applicant and further confirmed by a copy of the title as exhibited by the 2nd Defendant/ Respondent through annexure DN 3.
2. Thus, on injunct the 2nd Defendant/ Respondent in the manner sought by the Applicant vide prayer 3 of their application whence he is the registered owner and in possession of the suit property as evidenced by the photographs annexure DN 2 whilst the plaintiff having not established an inherent right and/or interest that is being infringed either by being the registered owner of the suit property or by been in occupation thereof will occasion hardship to the 2nd Defendant/Respondent.
3. Having found no inherent right or interest being infringed it follows that the Applicant has not established a prima facie case as was defined in the Mrao Limited vs First American Bank Limited case



where the court defined prima facie case as one” which on the material presented by the court a tribunal properly directing itself will conclude that there exists a right which is apparently been infringed by the opposite party so as to call for an explanation or rebuttal from the later....’ The court later in the said decision stated as follows “.....a prima facie case 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 Applicants case upon trial. That is clearly a standard which is higher than an arguable case....’

4. Once a prima facie has not been established the court is not required to enquire into the two other conditions in the Giella Vs. Cassman Brown as was held in the case of Kenya Commercial Finance Company Ltd Vs. Afraha Education Society (2001) I.E.A 86.where the court held interalia “..... if prima facie case is not established then irreparable injury and balance of convenience need no consideration...”
5. The Application dated 6th January 2025 having not met the threshold of grant of an injunction is hereby dismissed with costs to the 2nd Defendant/Respondent.
6. Under the practice directions No. 28(K) issued vide Gazette Notice No. 5178/2014, a court can issue a status quo order so as to preserve subject matter and accordingly, an order for maintenance of the Status quo is hereby issued preserving the status quo on the ground, to wit the 2nd Defendant to continue be in possession and utilize the suit property, and a status quo on the Land Register of Transmara/Moita/125, to wit the 2nd Defendant not to transfer the suit property to 3rd parties pending hearing and determination of this suit, is hereby issued.

DATED AND DELIVERED AT KILGORIS THIS 11TH DAY FEBRUARY OF 2025

HON. M.N. MWANYALE

JUDGE

In the presence of:

Mr. Ochwangi for 1st and 2nd Defendant/Respondent

Mr. Kantai for Plaintiff/Applicant

C/A Emmanuel/Sylvia

