



**Orumoi v Lelerwe & another (Environment & Land Case
E026 of 2023) [2025] KEELC 469 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 469 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E026 OF 2023
LC KOMINGOI, J
FEBRUARY 6, 2025**

BETWEEN

SIMINTEI ORUMOI APPLICANT

AND

PAREYIO OLE LELERWE 1ST RESPONDENT

KAJIADO WEST SURVEYOR 2ND RESPONDENT

RULING

1. Coming up for determination is the Notice of Motion application dated 25th September 2023 and the Preliminary Objection dated 4th April 2024.
2. The Notice of Motion is brought under: Sections 1A, 1B, 3, 3A, 63(c) of the *Civil Procedure Act*, Order 40 Rule 1, 2, 3, 4 and 10 of the Civil Procedure Rules, Section 13 of the *Environment and Land Court Act*, Article 63(4) and 159(2) of the *Constitution* and all other enabling provisions of Law and seeks orders;
 - i. Spent.
 - ii. That pending the hearing and determination of this suit, a temporary injunction order do issue, restraining the 1st Defendant/Respondent and his family by themselves, their agents, servants, employees or any other person whomsoever acting on their behalf from further encroaching, trespassing or constructing structures on or dealing in any manner whatsoever and howsoever with the parcel of land known as Kajiado/Ewuaso-Kedong/1437 measuring approximately 67.18 Ha.
 - iii. This Honourable Court be pleased to issue an order directing the Kajiado West District Surveyor to visit the parcel of land known as Kajiado/Ewuaso-Kedong/1437 to determine



all its boundaries and establish whether the 1st Defendant/Respondent and his family have encroached upon it and prepare a report on the same.

- iv. This Honourable Court be pleased to issue an order directing the OCS Ngong Police Station and/or officers under his command to give assistance to the District Surveyor by ensuring there is security in the implementation of the Order in prayer No. 4 above.
 - v. The costs of this application be provided for.
3. The grounds are on the face of the Application and are set out in paragraph 1 to 10. The Application is supported by the Affidavit of Simintei Orumoi sworn on the 25th September 2023. The Plaintiff/Applicant claims that he is the lawful owner of property Kajiado/Ewuaso-Kedong/1437 which the 1st Defendant/ Respondent and his family have invaded, trespassed upon and constructed semi-permanent structures thereon. Despite the Plaintiff/Applicant issuing an eviction notice, he has refused to vacate. In a quest to ascertain the boundary, he invited the 2nd Defendant/Respondent to undertake a survey and the 1st Defendant/1st Respondent together with owners of neighbouring parcels were issued with summons for this activity. The 2nd Defendant/Respondent visited the property on 22nd June 2023, but the fourth beacon could not be ascertained because the 1st Defendant/1st Respondent denied the Surveyor access to the portion of land in their occupation. He thus seeks this Court's intervention to determine the dispute.
 4. The 1st Respondent filed a Preliminary Objection dated 4th April 2024 contesting this Court's jurisdiction in determining the matter by dint of Section 18(2) of the [Land Registration Act](#) and sought that the suit herein be struck out.
 5. The 2nd Defendant/Respondent neither entered appearance nor filed a response to the Notice of Motion.
 6. The Notice of Motion and the Preliminary Objection were canvassed by way of written submissions.

The Plaintiff/Applicant's submissions

7. Counsel for the Plaintiff/Applicant submitted on the following issues for determination as summarised here below.
8. On whether the Plaintiff/Applicant had fulfilled conditions set for grant of an injunction as per *Giella vs Cassman Brown* [1973] EA 358, he submitted that the Applicant had established a prima facie case because the 1st Respondent was attempting at divesting the Applicant his property by impeding the determination and confirmation of the boundaries on the suit property. Counsel supported the argument with reference to *Alex Wainaina t/a John Commercial Agencies vs Johnson Wanjihia* (2015) eKLR, *Magnate Ventures Ltd vs Eng. Kenya Ltd* 2009) eKLR, and *Mrao vs First American Bank of Kenya Ltd & 2 others* (2003) eKLR.
9. On whether the Plaintiff/Applicant would suffer irreparable damages if the injunction is not granted, Counsel submitted that the Applicant risks being unjustly dispossessed of his land. Reference was made to *Films Rover International Ltd & others vs Common Film Sales Ltd* (1986) AER 772 and *Vivo Energy Kenya Ltd vs Maloba Petrol Station Ltd & 3 others* (2015) eKLR. On the last ground in whose favour the balance of convenience tilts, Counsel submitted that it lay in favour of the Applicant whose interest in the land would be defeated if the injunction is not granted citing *Nandan Pictures Ltd vs Art Pictures Ltd & others*. The 2nd Respondent should thus be ordered to undertake a site visit as prayed with the assistance of Police officers relying on *Republic vs Director of Surveys, Surveyor, District*



Land Registrar, David N. Chege, Wilson Ng'ang'a & Anthony Kanyari ex parte Ndeffo Company Ltd (2018) KEELC 3524 (KLR).

10. The other issue for determination was whether the Preliminary Objection is merited. Counsel submitted that whereas the question of jurisdiction was pertinent, the suit at hand was not a boundary dispute as per Section 18(2) of the Land registration Act but was a suit about trespass, as well as other Constitutional violations such as Article 40 of the Constitution and the objection should thus be dismissed with costs to the Applicant.

The 1st Defendant's/Respondent's submissions

11. On the issue of jurisdiction, Counsel submitted that this being a boundary dispute, the Court was estopped by Section 18(2) of the Land Registration Act from entertaining such actions and that boundary disputes could only be brought to this Court by way of an Appeal as per Section 86(1) of the Land Registration Act as read together with Regulation 40(6) of the Land Registration (General) Regulations. Reference was made to a myriad cases in support of this: George Kamau Macharia vs Dexka Ltd [2019] eKLR, Willis Ocholla vs Mary Ndege [2016] eKLR and Kairu vs Mutunga [2023] KEELC 21723 (KLR) among others. Therefore, the objection was merited and met the threshold set by Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696.
12. On whether the Plaintiff/Applicant had met the grant for temporary injunction, Counsel submitted that the Applicant had not established a prima facie case because it was clear from the titles in Court that the Applicant's parcel of land Kajiado/Ewuaso-Kedong/1437 and the 1st Defendant's/Respondent's parcel Kajiado/Ewuaso-Kedong/7673 were different and distinct parcels and there was no evidence of trespass adduced. Therefore, he had not also established that he would suffer irreparable injury which cannot be adequately compensated by an award of damages if the injunction is not granted.
13. Counsel thus submitted that the balance of convenience was in his favour because if the case was decided in the Plaintiff's/Applicant's favour, then the 1st Defendants/Respondent would easily be asked to vacate the property citing Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR and Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 others (2016) eKLR. The application should thus be dismissed with costs to the 1st Respondent.

Analysis and determination

14. I have considered the Notice of Motion, the rival submissions and the authorities cited. I find that the issues for determination are:
 - i. Whether the Preliminary Objection dated 4th April 2024 has met the required threshold;
 - ii. Whether the application dated 25th September 2023 for grant of interlocutory injunction is merited;
 - iii. Who should bear the costs of this application?
15. In Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd (1969) EA 696, the Court held that a proper Preliminary Objection must raise a pure point of law that is capable of disposing of the matter in limine. The Supreme Court of Kenya in Joho & another v Shahbal & 2 others [2014] KESC 34 (KLR) citing with approval held that:

“...Mukisa Biscuit Manufacturing Co Ltd v West End Distributors (1969) EA 696:



a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration. ...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”.

16. The 1st Defendant/Respondent relies on Section 18(2) of the *Land Registration Act*, which prohibits Courts from entertaining boundary disputes unless they have been resolved by the Land Registrar. While this is a pure point of law, the Plaintiff/Applicant contests that the dispute is on ownership and trespass. To ascertain this, means that the Court would have to delve into facts. As such, delving into the substance of the pleadings and evidence, makes the Preliminary objection inapt for determination as a pure point of law and it is hereby dismissed.
17. The second issue for determination on whether the Plaintiff/Applicant has established a case for grant of temporary.
18. *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358 established the conditions that must be satisfied for grant of an interlocutory injunction as reiterated by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn also Known As Hermannus Phillipus Steyn & Hedda Steyn* [2014] KECA 606 (KLR) where it was held:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay 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 stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially”

19. On the first condition as to whether the Plaintiff/Applicant has established a prima facie case with the likelihood of success, the Plaintiff/Applicant claims that he is the owner of property Kajiado/Ewuaso-Kedong/1437 which the 1st Defendant/Respondent has trespassed and settled on without his consent. He states that he sought a boundary determination but the 2nd Defendant /Respondent could not complete the same, because the 1st Defendant/Respondent denied him entry to the portion of the suit property in his occupation. The Plaintiff/Applicant presented his Title deed and the surveyor’s site visit report dated 26th June 2023 to support his claim. The Surveyor’s report which confirms that he could not access the 1st Defendant/Respondent’s portion because he declined to confirm ownership or produce any documents. Therefore, this Court finds that the Applicant has established a prima facie case.
20. On the second condition whether the Plaintiff/Applicant will suffer irreparable damage which could not be adequately compensated by an award of damages, the Plaintiff/Applicant submitted that he was



at risk of being dispossessed of his property which the 1st Defendant/Respondent was in the process of sub dividing. I note that the Surveyor's site visit report also indicates that "...The parcel 1437 has its boundary except for the Lelerwe family who have occupied a large chunk of the land..."

21. With the 1st Defendant/respondent's continued occupation and construction of semi-permanent structures on the suit property and land being an emotive issue, I find that it would be in the interest of justice to preserve and maintain a status quo pending the hearing and determination of this suit.
22. I also find that the balance of convenience tilts in favour of the Plaintiff/Applicant who is the registered owner of the suit property.
23. I find that the Plaintiff/Applicant has satisfied the threshold for grant of temporary injunction and the Notice of Motion application dated 25th September 2023 is allowed in the following terms;
 - i. That the 1st Defendant/Respondent is hereby restrained by himself, his family, his agents or anyone else acting on his behalf from trespassing, constructing any structures, or dealing in any manner whatsoever with parcel Kajiado/Ewuaso Kedong/1437 pending the hearing and determination of this suit.
 - ii. That an order is hereby issued directing the Kajiado West District Surveyor to visit the parcel of land known as Kajiado/Ewuaso-Kedong/1437 to determine all its boundaries and establish whether the 1st Defendant/Respondent and his family have encroached upon it and prepare a report on the same.
 - iii. That an order is hereby issued directing the OCS Ngong Police Station and/or officers under his command to give assistance to the District Surveyor by ensuring there is security in the implementation of the Order in prayer No. (ii) above.
 - iv. That costs of this application shall be borne by the 1st Defendant/Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 6TH DAY OF FEBRUARY, 2025.

L.KOMINGOI
JUDGE.

In the presence of:

Mr. Serpepi for the Plaintiff/Applicant.

Ms. Katao for the 1st Defendant/Respondent.

N/A for the 2nd Defendant/Respondent.

Court Assistant – Mutisya.

