



Gisiri (Suing as administrator of the Estate of Wilfred Gisiri Chacha) v Makongo (As administrator of the Estate of Mogondwe Makongo Mogondwe) & 3 others (Land Case (Originating Summons) E002 of 2025) [2025] KEELC 1142 (KLR) (12 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1142 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
LAND CASE (ORIGINATING SUMMONS) E002 OF 2025**

**M SILA, J
MARCH 12, 2025**

BETWEEN

ELIZABETH ROBI GISIRI (SUING AS ADMINISTRATOR OF THE ESTATE OF WILFRED GISIRI CHACHA) APPLICANT

AND

WANKURU MOGONDWE MAKONGO (AS ADMINISTRATOR OF THE ESTATE OF MOGONDWE MAKONGO MOGONDWE) 1ST RESPONDENT

NYAITANGE MOGONDWE MAKONGO 2ND RESPONDENT

YUSTINA NYAITANGE 3RD RESPONDENT

NYANKARIA SAMSON CHACHA 4TH RESPONDENT

RULING

(Application for injunction and prohibitory orders; suit for adverse possession; possession contested by the respondents and respondents also raising issue of the applicant’s capacity; no grant annexed by the applicant to the suit or supporting affidavit to demonstrate her capacity to sue; land having had eucalyptus trees which the applicant alleges to have planted; trees harvested by respondents thus bringing to doubt the possession of the applicant; applicant not annexing the extract of the register; court not persuaded that a prima facie case is established; application dismissed)

1. The application before me is that dated 13 January 2025 which was filed contemporaneously with the Originating Summons herein. The applicant seeks the following orders :
 - i. That the honourable court be pleased to order the Land Registrar, Kuria, to register a prohibition/restriction on the land parcel Nyabasi/Bomerani/309 until the hearing and determination of the Originating Summons.



- ii. That the honourable court do issue an order restraining the respondents from interfering or disposing of 0.58 ha of the suit land on which is planted eucalyptus trees on the land parcel Nyabasi/Bomerani/309.
2. The application is supported by the affidavit of the applicant. She has deposed that she is the wife and administrator of the late Wilfred Gisiri Chacha. She avers that the deceased purchased the disputed portion through a sale agreement, which owing to a clerical error, captured the land as a parcel No. 39 instead of parcel No.309. She has deposed that since the beginning of the year the respondents have interfered with this portion which led her to file the suit Kehancha SPMCC No. E034 of 2024. She has annexed the alleged sale agreement entered into by her late husband dated 28 May 2008, and the plaint in Kehancha SPMCC No. E034 of 2024.
3. The application is opposed by the respondents through the replying affidavit of Nyaitange Mogondwe Makongo. She asserts that the applicant has never been in occupation of the suit land and the trees therein were jointly planted by the respondents. She contends that it is actually the applicant who has been interfering with the occupation of the respondents by cutting the respondents' trees on the suit land. She has annexed an OB number to demonstrate a complaint made to the police. She further contends that the allegation that the applicant has been in occupation of the suit land for over 12 years is false. It is also denied that the deceased ever entered into a sale agreement with the said Nyaitange as claimed and the sale agreement is disputed. It is added that the applicant does not have locus standi to sue on behalf of the estate of Wilfred Gisire (deceased). She has raised issue that the applicant has the other case Kehancha SPMCC No. E034 of 2024 and claims that she is forum shopping and abusing the court process. She does not believe that the applicant has established a prima facie case with a probability of success. She asserts that she and her family have been in occupation of the disputed portion measuring 0.59 Ha of the land parcel Nyabasi/Bomerani/309 (the suit land).
4. I have gone through the material presented together with the submissions filed. I have only seen the submissions of Mr. Kerario Marwa, learned counsel for the applicant and I have taken the same into consideration.
5. What is before me is more or less an application for injunction. The principles to be considered in an application of this nature are well settled. The applicant needs to demonstrate a prima facie case with a probability of success; show that he/she stands to suffer irreparable loss if the injunction is not given; and where the court is in doubt, it will decide the case on a balance of convenience.
6. The pleadings show that the applicant has commenced suit as administrator of the estate of Wilfred Gisiri Chacha. It has been raised in the replying affidavit that the applicant is not an administrator of the said estate despite her claim. You would expect that the applicant demonstrates her capacity through a grant of letters of administration. I have not seen any. I observe that in her supporting affidavit to both the Originating Summons and to the subject application, she has purportedly annexed a grant labelled 'ERG-1' but my perusal of the affidavit does not show any such grant annexed. I cannot tell at this stage whether the failure to annex the alleged grant was an error or whether such grant does not in fact exist. But it is important for the purposes of this application that I do not have the grant, and that being the position, it cannot be said that the applicant has demonstrated capacity to commence this suit. Without demonstrating capacity it cannot be said that she has demonstrated a prima facie case with a probability of success.
7. Besides the foregoing, I see that what the applicant seeks is inter alia an order of restriction to be registered in the land parcel Nyabasi/Bomerani/309. You would expect the applicant to annex the extract of the register (Green Card) of the title in question as a court wouldn't issue an order of restriction on a title it has not seen. In fact, the Originating Summons risks being declared incompetent



for failure to annex the extract of the register as required by Order 37 Rule 7 (2) of the Civil Procedure Rules, 2010. Without annexing the said extract of register it is difficult even to know whether the right parties have been sued.

8. In addition to the above, I observe that the applicant has another ongoing dispute related to the suit land which is the case Kehancha SPMCC No. E034 of 2024. From the plaint, which was annexed, I see that the complaint of the applicant was that the respondents harvested eucalyptus trees on the suit land and she has asked for damages in the sum of Kshs. 1,169,277/= and a permanent injunction to restrain the respondents from the suit land. Well, if the respondents harvested the trees, that calls into question the allegation of the applicant that she has been in quiet possession of the suit land. I also do not see how the applicant can be pursuing a case of permanent injunction in one case and another for adverse possession in a second case. There is certainly a risk of a conflict of decisions.
9. In light of the above, I am not persuaded that a prima facie case with a probability of success has been laid out to warrant this court issue the orders sought.
10. The application is therefore dismissed with costs to the respondents.
11. Orders accordingly.

DATED AND DELIVERED THIS 12 DAY OF MARCH 2025

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT

AT MIGORI

Delivered in presence of:

Roselyne Kinya – Court Assistant

Mr. Kerario Marwa for the applicant – Absent

Mr. Abisai for the respondents - Absent

