



Kiiru v Githinji (Representative of Joseph Githinji Kanyogo - Deceased) & 5 others (Environmental and Land Originating Summons E001 of 2025) [2025] KEELC 1233 (KLR) (12 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1233 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2025
LN MBUGUA, J
MARCH 12, 2025

BETWEEN

SAMUEL KAMUHIA KIIRU PLAINTIFF

AND

PAUL WAGURI GITHINJI (REPRESENTATIVE OF JOSEPH GITHINJI KANYOGO - DECEASED) 1ST DEFENDANT

LUCY WAMUYU NDUMIA 2ND DEFENDANT

FRANCIS MWANGI NGERA 3RD DEFENDANT

CHARLES NGECHU GITHINJI 4TH DEFENDANT

SAMUEL KARIUKI GITHINJI 5TH DEFENDANT

JOHN WANJAU GITHINJI 6TH DEFENDANT

RULING

1. Before me is a notice of motion application dated 31.1.2025 where the plaintiff/applicant is seeking orders of injunction against the 6 respondents on the basis of a claim of adverse possession. The matter was scheduled for inter-partes hearing on 3.3.2025 when the court gave directions on the prosecution of the said application with the substantive ruling slated for 7.5.2025.
2. The applicant however seeks interim orders as set out in prayer 4 and 5 of the application in the intervening period, of which the said prayers have been opposed, hence this ruling.
3. At prayer 4, the applicant seeks an order of injunction to restrain the defendants from interfering with his possession of parcel Euaso Nyiro/ Suguroi/BlockV11/9, while prayer 5 is an order of stay of the proceedings in CM ELC 075 of 2024.



4. In opposition thereof, the defendants contend that they filed a suit before the magistrate's court whereby their application for injunction is underway and the current plaintiff has been seeking time again and again to file submissions. The defendants seek for more time to file their papers before the court can give any orders.
5. I have considered the material so far availed before this court, and I have also perused the lower court file in CM ELC E075 of 2024 pursuant to the directions given by this court on 3.3.2025. I have established that Francis Mwangi Ngera filed a suit for eviction of Samuel Kamuhia from parcel Euaso Nyiro/Suguroi/BlockV11/2126 on 8.10.2024. The said suit was contemporaneously filed with an application of even date seeking orders of injunction against that particular defendant. The prosecution of the said application is underway and the matter is slated for mention on 19.3.2025.
6. There being no dispute that the suit before the magistrate's court is for eviction of the current plaintiff, and that the current suit relates to a claim of adverse possession, I find no reason to engage in an exercise of splitting hairs through myriad applications in different courts with possibilities of having conflicting decisions. In that regard, and taking into account that this court is the one vested with jurisdiction to hear a claim of adverse possession, I find that the logical course of action is to transfer the suit before the magistrates court to be heard with the current suit.
7. To this end, I proceed to invoke the provisions of Section 18 of the *Civil Procedure Act* for the suit CM ELC E075 of 2024 to be transferred from the magistrate's court to this court.
8. On the injunctive orders sought by the parties under Order 40 of the *Civil Procedure Rules*, again this court need not re-invent the wheel. It is pertinent to note that the current plaintiff is in possession of the suit land going by the orders of eviction sought by one Francis Ngera in the older suit. In order to achieve the overriding objective set out under Section 1A (1) of the *Civil procedure Act*, the court gives a blanket order of maintenance of status quo (ground as well as registration status) in terms of the provisions of Section 63(e) of the *Civil Procedure Act*. I also make reference to case of *Thugi River Estate Limited & Another v National Bank of Kenya Limited & 3 Others* (2015) eKLR, *Daniel Kinyanjui Gitau & 227 Others v Mary Ruguru Njoroge* (2020) eKLR, *Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & Another* (2020) eKLR.
9. Once the older suit, the one before the magistrates court is availed to this court, it shall be registered afresh, consolidated with this case and it shall be the lead file while the younger suit (ELC OS E001 of 2025) shall be designated as a Counterclaim.
10. Noting that none of the protagonists vested rights will be lost through the directions given above, then the applications filed by the rival parties are hereby marked as spent, and so are the directions giving a date for a ruling on 7.5.2025. Each party is to bear their own costs of the various applications.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 12TH DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Muhizi for plaintiff

Wahome Gikonyo for the defendant

Nancy Mwangi – Court Assistant

