



REPUBLIC OF KENYA



**Wekesa & 2 others v Namianya & 2 others (Environment & Land Case E010 of 2024) [2025] KEELC 1345 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1345 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE E010 OF 2024  
EC CHERONO, J  
MARCH 13, 2025**

**BETWEEN**

**GABRIEL WANYONYI WEKESA ..... 1<sup>ST</sup> PLAINTIFF  
AGNES ELIMA WAFULA ..... 2<sup>ND</sup> PLAINTIFF  
EMMANUEL MARAUNI WAMUKONYE (SUING AS THE LEGAL  
REPRESENTATIVE OF THE ESTATE OF CHARLES SIMIYU  
HULULA) ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**JULIUS W. NAMIANYA ..... 1<sup>ST</sup> DEFENDANT  
ABEL WALEKHWA NAMIANYA ..... 2<sup>ND</sup> DEFENDANT  
HENRY WAMALWA NAMIANYA (BEING SUED AS ADMINISTRATOR OF  
THE ESTATE OF JOHN NAMIANYA MUNIALO) ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Vide a Notice of Motion application dated 12<sup>th</sup> April 2024, the Applicants who are also the plaintiffs in this suit are seeking the following orders;
  - a. (Spent)
  - b. That this Honourable court be pleased to issue a temporal injunction order restraining the Respondents by themselves and any other person acting on their behalf from any way trespassing, dealing, alienating or wasting the property herein referred to as LR Bokoli/Chwele/982 pending the hearing and determination of this application inter-parties.
  - c. That this Honourable court be pleased to issue a temporal injunction order restraining the Respondents by themselves and any other person acting on their behalf from any way



trespassing, dealing, alienating or wasting the property herein referred to as LR Bokoli/Chwele/982 pending the hearing and determination of this suit.

- d. That this Honourable court be pleased to issue a prohibition/restriction order on land parcel No. Bokoli/Chwele/982 pending the hearing and determination of this application inter-parties.
  - e. That this Honourable court be pleased to issue a prohibition/restriction order on land parcel No. Bokoli/Chwele/982 pending the hearing and determination of this suit.
  - f. That the land Registrar Bungoma be barred from executing partition forms for purposes of subdividing this suit land Bokoli/Chwele/982 pending hearing and determination of this suit.
  - g. That costs be in the cause.
2. The application is based on grounds apparent on the face of the said application supported by the affidavit of Gabriel Wanyonyi Wekesa, the 1<sup>st</sup> Applicant herein sworn on even date. In his supporting affidavit, the 1<sup>st</sup> Applicant stated that his father Charles Simiyu Hulula (deceased) purchased the suit land but since he was working for gain as a teacher in far flank areas, he entrusted on John Namianya Munialo (also now deceased) to assist in procuring consent, transfer forms and having title issued in his name. He stated that instead of assisting to procure title as instructed, the said John Namianya Munialo alias Namianya Munialo (deceased) took that advantage and fraudulently registered the entire suit land parcel NO. Bokoli/Chwele/982 in his name. He deposed that surprisingly, the Respondents secretly carried out Succession on the estate of the said John Namianya Munialo alias Namianya Munialo *vide* BGM P&A 390 of 2010 by listing the suit property as part of his estate for distribution despite them being currently in possession and occupation of the property. He stated that with the help of their clan elders, they convened a family gathering in 2013 to resolve the dispute and entered into a formal agreement with the Respondents but the Respondents reneged
  3. The Applicant further stated that they did not tire but they moved to Kimilili Land Tribunal Board in the year 2013 where they sued the Respondents and their claim was awarded. He annexed copies of the alleged agreement and after the hearing, the claim was awarded by the Tribunal as GWW-II a & b. He stated that one Abel Walekhwa Namianya and Julius W. Namianya filed a suit in Bungoma ELC Case NO.319 of 2013 to have them evicted and a permanent injunction restraining them from coming back to the suit land but the said case was dismissed. He annexed a copy of the judgment as GWW III. He stated that the County Surveyor, Bungoma County visited the disputed land which is also the subject of the current suit being NO. Bokoli/Chwele/982 and confirmed that they were in possession and occupation of the same. He annexed a report by the Surveyor and marked GWW-IV.
  4. He further deposed that upon realising that the Respondents had filed succession cause being Bungoma P&A 319 of 2010, they filed an application to have the grant revoked but the court in a Judgment delivered on 22/02/2024 declined and advised them to launch a claim in the Environment and land court. A copy of the said judgment is annexed and marked GWW-V.
  5. The Applicant stated that the Respondents are desirous of executing transfer forms on LR NO. Bokoli/Chwele/39 & 42 transmissions forms for purposes of subdividing the suit land thereby depriving them of their rightful share of the deceased's estate. He annexed a copy of the green card and certificate of official search as GWW-VI a & b. He stated that there is a desirous hardship and disclosure of material facts by the Respondents to the land Registrar to lift the existing caution and remove the restriction presented by them which if allowed will prejudice and expose them to hardship.



6. By way of a response, the Respondents filed Replying affidavit through Julius W. Namianya sworn on 17<sup>th</sup> December, 2024 in which he deposed that their father Namianya Munialo (deceased) died intestate leaving four sons behind namely Tomothy Wanyonyi Namianya, Abel Walekhwa Namianya, Henry Wamalwa Namianya and Julius W. Namianya who is the deponent herein.
7. He stated that their late father did not have any other son or grandson by the names Gabriel Wanyonyi Wekesa, Agnes Nelima and Emmanuel Marauni Wamukonye.
8. He deposed that they had initially filed succession cause in respect of their late father but the Applicants filed an objection proceedings in Bungoma High Court P & A NO.319 of 2010 but the trial court dismissed the said objection vide a judgment delivered on 22/02/2024. He stated that upon completion of the succession cause, they got registered on their respective shares of parcels of the suit land LR NO. Bokoli/Chwele/982
9. The Respondents further argued that the jurisdiction of this honourable court vis-à-vis other courts of concurrent jurisdiction under Article 165(5) of the [Constitution](#) and it precludes this court from hearing matters of deceased estates, succession disputes and other proceedings from the management of estates. He stated that the Applicants have sued them as beneficiaries of the estate of Charles Simiyu Hulula which was properly, effectively and finally determined by the succession court and that the current proceedings cannot see the light of the day.

### **Applicants Submissions**

10. The Applicants did not file submissions within the stipulated timelines.

### **Respondents Submissions.**

11. The Respondents through the Firm of M/S J.W Sichangi & CO. Advocates filed submissions dated 28<sup>th</sup> February 2025 and argued that the Applicants claim mirrors their claim in the succession cause where they alleged that their father bought the suit land from the Respondents' father but no prove of the same was shown. They submitted that the doctrine of adverse possession cannot arise here since they are family members who lived on ancestral parcels of land bordering each other. They argued that the Applicants have not disclosed any actionable interest in the suit land nor pleaded fraud against the Respondent's title. They cited the case of [Mrao Ltd v First American Bank of Kenya Ltd](#) (2003) eKLR and Order 40 of the [Civil Procedure Rules](#)

### **Legal Analysis and Decision**

12. I have considered the application dated 12/04/2024, the supporting affidavit, the Replying affidavit, the submissions by the Respondents and the applicable law. The Applicants in the said application are seeking an equitable relief of injunction restraining the Defendants/Respondents by themselves and any other person acting on their behalf from trespassing, dealing, alienating or wasting the suit property pending hearing and determination of this suit. The Applicants contend that their father one Charles Simiyu Hulula (now deceased) instructed the Respondent's father one John Namianya Munialo to buy for him the suit land since he was working as a teacher in West pokot. They further allege that the said John Namianya Munialo took advantage of their late father's distance and after purchasing the land on his behalf, fraudulently caused the same to be registered in his name.
13. It is now settled that in any interlocutory application for injunction, the Court must satisfy itself that the Applicant has established the triple conditions as set out in the celebrated case of [Giella v Cassman Brown Company Ltd](#) (1973)EA 358 to wit;



- a. A prima facie case with high chances of success;
  - b. Irreparable injury which may be compensated by damages and
  - c. Where the court is in doubt, it may decide the application on a balance of convenience.
14. In the present suit, the plaintiffs/Applicants averred that the Defendants/Respondents' father acquired registration of the suit property through fraud and that the Defendants/Respondents secretly applied for letters of administration and as beneficiaries, they are in the process of transferring parcels of the suit property unless restrained by an injunction order. I find that the Applicants have established the first condition for the grant of an order of injunction. The Applicants have also stated that they have been in possession and occupation of the suit property since their late father bought it in 1964 to date and that they have made extensive developments on the suit property. Those averments given under oath have not been controverted. I also find that if the suit property currently in possession and occupation of the Plaintiffs/Applicants is disposed/alienated to third parties, the Applicants may suffer irreparable loss.
15. It is also trite that in deciding whether to grant a temporary injunction or not, the court in *Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & Another* (2019) eKLR held as follows;
- Circumstances for consideration before granting a temporary injunction under order 40 Rule 1 of the *Civil Procedure Rules* requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property; the court in such an application for a temporary injunction, the court is in such situation enjoined to grant a temporary injunction to restrain such acts..."
16. At paragraph 11 of the supporting affidavit, the Applicant deposed that the Respondents have made an application to the Land Registrar to lift the existing caution in place which if allowed will cause the suit property to be alienated before the suit is heard and determined thereby making this suit an academic exercise. The Applicant has also stated on oath that the manner through which the Respondents acquired title to the suit property is shrouded with fraud and misrepresentation. In view of those serious allegations, I am convinced that it would be in the interest of justice to grant the temporary injunction thereby maintaining the status quo pending the hearing and determination of the main suit.
17. In view of my above analysis, I find the Notice of Motion application dated 12<sup>th</sup> April 2024 merited and the same is hereby allowed as follows;
- a. A temporary injunction be and is hereby issued restraining the Respondents by themselves and any other person acting on their behalf from any way entering, dealing, alienating, subdividing or wasting the suit property LR NO. Bokoli/Chwele/982 pending the hearing and determination of this suit.
  - b. The costs of this application shall be costs in the cause.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 13<sup>TH</sup> DAY OF MARCH, 2025.**

**HON. E.C CHERONO**

**ELC JUDGE**

In the presence of;

Juma Waswa for the Applicants



Mr. Sichangi for the Respondents

2<sup>nd</sup> Respondent-present.

Bett C/A

