



**Chirchir v Nyarangi (Environmental and Land Originating Summons
E007 of 2024) [2025] KEELC 3543 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3543 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2024**

MAO ODENY, J

MAY 6, 2025

BETWEEN

JOEL K CHIRCHIR APPLICANT

AND

SAMSON. O NYARANGI RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 27th August, 2024 by the Applicant seeking the following orders:
 - a. Spent
 - b. That pending the hearing and determination of the suit filed herewith, the Honorable Court be and is hereby pleased to grant temporary injunction restraining Respondent whether by themselves, directors, employees, servants, agents and/or otherwise anyone claiming under its authority from advertising for sale, selling whether by public auction or private treaty, disposing of or otherwise howsoever completing by conveyance or transfer or any sale concluded by auction or private treaty, taking possession, appointing receivers or administrators or exercising any power of a charge to lease, let, charge or otherwise howsoever interfering with the Applicant's quiet possession, ownership of and title to all that parcel of land known as land Reference Number Molo South/Langwenda Block/17/118 (SEGUTON) (hereinafter referred to as the "suit parcel")
 - c. That pending the hearing and determination of the suit filed herewith, the Honorable Court be and is hereby pleased to grant temporary injunction restraining Respondent whether by themselves, directors, employees, servants, agents and/or otherwise anyone claiming under its authority from advertising for sale, selling whether by public auction or private treaty, disposing of or otherwise howsoever completing by conveyance or transfer



or any sale concluded by auction or private treaty, taking possession, appointing receivers or administrators or exercising any power of a charge to lease, let, charge or otherwise howsoever interfering with the Applicant's quiet possession, ownership of and title to all that parcel of land known as land Reference Number Molo South/Langwenda Block/ 17/118 (SEGUTON). (sic)

- d. That the Honorable be and is hereby pleased to grant such other orders as it may deem fit to give effect to the justice of this dispute and preserve the subject matter in this suit being property as land Reference Number Molo South/Langwenda Block/17/118 (SEGUTON). (sic)
 - e. That the costs of this application be provided for.
 - f. That the Court may issue any other orders they deem fit and just in the circumstances.
2. The application was supported by the affidavit of Joel Chirchir, the Applicant, sworn on 27th August, 2024 where he deponed that in the year 2001, he entered into a legally binding agreement with the respondent for the purchase of Molo/Land Seku Toni/Keringeti and Molo South/Langwenda/Block 17 (Seguton) 118 which were approximately 20 acres cumulatively at a consideration of Kshs. 1,300,000/= of which he paid a total sum of Ksh.1,301,000/= vide Bankers cheques, personal cheques and cash between 28th March 2001 and 30th May 2005.
 3. The Applicant further deponed that in 2005 he took possession of the suit parcel of land but in November 2018, the Respondent instituted frivolous and vexatious proceedings before the Farm Secretary of Seguton, a Mr. John Chepkwony seeking to reclaim the suit parcel under the pretext that the full purchase price had not been paid. It was his deposition that an order was consequently made compelling the Applicant to either pay an additional Ksh 130,000/= or surrender ownership of the suit parcel to the Respondent.
 4. The Applicant also stated that he is the rightful owner of the suit land by virtue of adverse possession and prays that this Honourable Court grants the orders as prayed in the application.
 5. Samson Nyarangi, the Respondent, filed a Replying Affidavit sworn on 17th September, 2024, and deponed that he is the registered owner of all that parcel of land known as Molo South/Langwenda Block 17/118 (Seguton). He stated that he neither entered into an agreement for the sale of the two distinct land parcels nor received any money for the parcels of land. He further deponed that the suit land has always been under his control and use and urged the court to dismiss the application with costs.

Applicant's Submissions

6. Counsel for the Applicant filed submissions dated 11th November, 2024 and identified the following issues for determination:
 - a. Whether the Applicant is entitled to the orders of temporary injunction pending hearing and determination of the main suit?
 - b. Whether the Applicant is entitled to costs of the Application?
7. On the first issue, counsel relied on Order 40 Rule 1 and 2 of the Civil Procedure Rules 2010 and the cases of Giella vs Cassman Brown & Co Ltd (1973) EA 358, Mrao Ltd vs First American Bank of Kenya Ltd & 2 others [2003] eKLR.



8. On whether the Applicant has established a prima facie case, counsel submitted that the Applicant has provided a recent official search of the suit property marked as JC-2 which corroborates the Respondent's status as the registered owner.
9. It was counsel's submission that adverse possession can override the rights of the registered owner under certain circumstances. Counsel further submitted that the photographic evidence marked as JC-4 proves that the Applicant has been in continuous, open and visible possession of the property for a significant period consistent with the requirements of adverse possession. Ms. Kahura relied on annexure JC-5, minutes where the Respondent admitted that the Applicant was indeed in possession of the land.
10. Counsel further submitted that the Applicant will suffer irreparable injury if the injunction is not granted, as the officials from the Nakuru County Government have expressed their intention to purchase the suit property from the registered owner, without any reference to the Applicant. Counsel submitted that should the Respondent succeed in selling the property to the County Government, or any other third party, the Applicant's claim to the property would be severely prejudiced, as it would render the purpose of these proceedings futile.
11. Ms. Kahura stated that the Applicant has been in possession of the land for over fifteen years and has developed a deep emotional attachment to it, which cannot be quantified in monetary terms. Further that the balance of convenience favors the Applicant and urged the court to allow the Application with costs.

Respondent's Submissions

12. Counsel for the Respondent filed submissions dated 27th December, 2024 and submitted that the Applicant has not established a prima facie case against the Respondent as the Applicant has admitted that the continuous quiet enjoyment and possession was interrupted in the year 2018 and it follows that time started running afresh from the said year and relied on the case of *Giella vs Cassman Brown* (1973) EA 358.
13. Mr. Marube submitted that the Applicant has not demonstrated what kind of irreparable harm he will suffer if the court does not grant the orders of injunction and relied on the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (2018) eKLR.
14. Counsel further submitted that the balance of convenience tilts in favour of the Respondent and urged the court to dismiss the Application with costs to the Respondent.

Analysis And Determination

15. The issue for determination is whether the Applicant has met the threshold for the grant of a temporary injunction as set out in the case of *Giella vs. Cassman Brown* [1973] EA 358, where the court held as follows:

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”



16. It is the Applicant's case that he has been in occupation of the suit parcel of land for a period of 15 years, and the same is registered in the name of the Respondent, who sold to him vide a sale agreement for a consideration of Kshs. 1.3 Million which he paid in full.
17. Under Order 40 Rule 1 of the Civil Procedure Rules a party seeking temporary injunction must prove that the property in dispute is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property. If the Applicant proves the same, then the court can grant temporary orders of injunction to preserve the property pending the hearing and determination of the suit.
18. The Applicant stated that officials from the Nakuru County Government expressed their intention to purchase the suit property from the registered owner, without any reference to him which would cause him irreparable injury. In the case of Ernest Muriuki Mungai -v- Gichugu Constituency Development Fund & Another 2017 eKLR, the court adopted the following definition of irreparable injury:

“The term ‘irreparable injury’, however, is not to be taken in its strict sense. The rule does not require that the threatened injury should be one not physically capable of being repaired. If the threatened injury would be substantial and serious – one not easily to be estimated or repaired by money – and if the loss or inconvenience to the Plaintiff if the injunction should be refused (his title proving good) would be much greater than any which can be suffered by the Defendant through the granting of the injunction, although his title ultimately prevails, the case is one of such probable great or irreparable damages as will justify a preliminary injunction.”

19. In the case of Pius Kipchirchir Kogo Vs Frank Kimeli Tenai [2018] eKLR the court stated as follows on what constitutes a balance of convenience:

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

20. The court had granted a temporary injunction pending this ruling and I therefore find that the Applicant has established a prima facie case for the grant of a temporary injunction pending the hearing and determination of this suit. The Respondent will not suffer any prejudice if an order of injunction is issued, as he is not in occupation of the suit land.
21. I therefore issue the following orders:
 - a. A temporary injunction is hereby issued restraining the Respondent whether by himself, directors, employees, servants, agents and/or otherwise anyone claiming under his authority from disposing of all that parcel of land known as land Reference Number Molo South/Langwenda Block/17/118 (SEGUTON) pending the hearing and determination of this suit.
 - b. Costs to the Applicant.



DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF MAY 2025.

M. A. ODENY

JUDGE

