



Tanteu & 4 others v Chele & another (Enviromental and Land Originating Summons E003 of 2025) [2025] KEELC 4339 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4339 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2025**

MD MWANGI, J

JUNE 5, 2025

**IN THE MATTER OF AN APPLICATION UNDER SECTION 38 OF
THE LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA**

AND

IN THE MATTER OF ACQUISITION OF TITLE BY ADVERSE POSSESSION

AND

**IN THE MATTER OF LAND PARCEL NO. KAJIADO/LOODARIAK/10041 AND
10042 (RESULTANT OF THE SUBDIVISION OF KAJIADO/LOODARIAK/2114)**

BETWEEN

**JOEL KINTALEL TANTEU 1ST PLAINTIFF
DANIEL MORIASO KAIYAO 2ND PLAINTIFF
SANKOK OLE PAROIP 3RD PLAINTIFF
VIVIAN TEPESO ENE SANKOK 4TH PLAINTIFF
JOEL LASITI OLE SINKO 5TH PLAINTIFF**

AND

**ROBAI NALIAKA CHELE 1ST DEFENDANT
BEATRICE NEKESA ONDUSO 2ND DEFENDANT**

RULING

(In respect of the notice of motion by the plaintiff dated 17th February 2025 seeking an order of temporary injunction against the defendants pending the hearing and determination of the suit)



Background

1. The plaintiffs initiated this matter by way of an originating summons dated 2nd February 2025. They seek a determination of the question whether they have acquired title to the properties Kjd/Loodariak/10041 and Kjd/Loodariak/10042 by way of adverse possession and whether they are entitled to be registered as the owners of the subject parcels amongst the other orders listed on the face of the originating summons.
2. In the supporting affidavit sworn by Joel Kintalel Taunteu, the plaintiffs affirm that they are and have been in occupation of the subject properties with their families occupying distinct portions which are identifiable on the ground. They allege that their occupation of the suit properties has been open, peaceful and continuous; it has never attracted any hostility, claim, or interruption until the year 2024 when the plaintiffs were summoned by the DCI Kiserian, accused of forcible detainer of the subject parcels of land. They were subsequently charged with the offence of forcible detainer in the Ngong Law Courts. The criminal matter is pending determination. The defendants are the complainants in the criminal case.
3. Alongside the originating summons, the plaintiffs filed the notice of motion under consideration seeking orders of temporary injunction against the defendants pending the hearing and determination of this suit.
4. The application is opposed by the defendants each of whom filed a replying affidavit in response to the application, terming the plaintiffs' claim of adverse possession baseless, misconceived, ill-advised and an abuse of the court process. Each claimed to have been registered as proprietor of their respective parcel in the year 2014. As such, they allege that the requisite 12 years period have not lapsed to sustain the plaintiffs' claim for adverse possession. In any event, they argue that the plaintiffs' occupation of the suit property has been challenged on several occasions. It has not been peaceful, as alleged.
5. The defendants filed supplementary affidavits titled as 'supporting affidavits' each alleging that since 2014 after they acquired title, the suit properties have been vacant until sometimes in 2021 when the plaintiffs trespassed into the therein claiming ownership and proceeded to build temporary structures therein. The structures according to the defendants are recent.
6. The defendants reiterate that the plaintiffs' claims of adverse possession are fraudulent and unfounded. They are but attempts to grab idle land through occupation.

Directions.

7. The court's directions were that the application be canvassed by way of written submissions. Both sides filed their respective submissions which form part of this court's record. I have had the opportunity to read and consider them in writing this ruling.

Issues for determination.

8. The sole issue for determination is whether the plaintiffs' application has met the threshold for the grant of an order of temporary injunction.

Analysis and determination.

9. Before proceeding to determine the above identified issue, I wish to comment on the plaintiffs' submissions and the second issue they have put forth for determination.



10. The plaintiffs have identified a 2nd issue in their submissions for determination; whether the criminal proceedings against them ought to be stayed. They proceed to submit that this court has supervisory jurisdiction over the Magistrates' courts by dint of Article 165 (6) of *the Constitution*. They urge the court to exercise its discretion and stay or quash the criminal proceedings against them in the Ngong Chief Magistrate's Court for the reasons that the proceedings have been instituted maliciously and are being used as a tool to intimidate and threaten them from enforcing their crystallized rights thereby amounting to an abuse of the process of court.
11. For starters, no such prayer was made in the notice of motion dated 7th February 2025.
12. In that regard, the holding of Odunga J (as he then was), in the case of Robert Ngande Kathathi –vs- Francis Kivuva Kitande (2020) eKLR, suffices to address this issue. The learned Judge stated that,

“Submissions, with due respect, do not amount to evidence unless expressly adopted as such. Consequently, in legal proceedings, evidence ought not to be introduced by way of submissions. Submissions simply concretize and focus on each sides case to win the court's decision that way. Submissions are not evidence on which a case is decided”.
13. Secondly, such a prayer to stay or quash criminal proceedings can only be considered in a proper application made in accordance with the law; with the office of the Director of Public Prosecutions being a party and duly served.
14. Finally, judicial discretion is not to be exercised ‘anyhowly’. It must be exercised judiciously, not arbitrarily or in a capricious manner. It cannot be invoked in the lackluster manner as the plaintiffs purport to. Lord Mansfield in the case of Republic –vs- Wilkes (1770) ER 327, defined judicial discretion in the following words,

“Discretion when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humor; it must not be arbitrary, vague, and fanciful, but legal and regular.”
15. I will say no more. I now proceed to determine the issue of the temporary injunction.
16. The guiding principles for the grant of an order of interlocutory injunction were set out in the case of Giella –vs- Cassman Brown Co. Limited (1973) EA 358.
17. An Applicant must establish a prima facie case, demonstrate irreparable injury if a temporary injunction is not granted, and allay any doubts as to (b) by showing that the balance of convenience is in his favour.
18. The Court of Appeal in the case of Nguruman Ltd – vs Jan Bonde Nielsen & 2 others (2014) eKLR, while affirming the principles in Giella –vs- Cassman Brown held that,

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not



establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.

On the second factor, that the applicant must establish that he "might otherwise" suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot "adequately" be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy."

19. The plaintiffs in this case allege that they have been in occupation of the subject parcels of land for over 12 years and have been living therein with their families. They allege that they have built their homes in the subject parcels.
20. The defendants presented their responses to the application by the plaintiffs as well as their submissions as if they were responding to the main suit; they identified the issues for their submissions as,
 - i. Whether the plaintiffs have met the legal threshold for adverse possession,
 - ii. Whether the plaintiffs' occupation has been continuous, peaceful and without interruption,
 - iii. Whether the plaintiffs' claims are barred by the existence of criminal proceedings, and
 - iv. Whether the plaintiffs' claim is an abuse of the court process and should be dismissed.
21. In establishing whether a prima facie case has been made however, all that the court is to see is that on the face of it, the person applying for an injunction has a right which has been or is threatened with violation. The positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. In other words, the court is not called upon to conduct a mini-trial.
22. Considering the affidavit evidence presented by the plaintiffs, I am persuaded that the plaintiffs have not only established a prima facie case but have also proved that they stand to suffer irreparable injury unless the order of the temporary injunction is granted pending the hearing and determination of this suit.
23. In arriving at this conclusion, I am further guided by the decision of Warsame J, (as he then was) in the case of Joseph Siro Mosiama –vs- HFCK & 3 others (2008) eKLR, where he stated that;

“Damages is not and cannot be a substitute for the loss, which (may) be occasioned by a clear breach of the law in any case, the financial strength of a party is not always a factor to refuse an injunction. More so, a party cannot be condemned to take damages in lieu of his crystallized right which can be protected by an injunction”.
24. Consequently, I grant the plaintiffs an order of temporary injunction as sought, for a maximum period of one (1) year from the date of this ruling, within which time the plaintiffs must prosecute this suit.
25. The costs of the application shall be in the cause.



It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 5TH DAY OF JUNE 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Manyange for the Defendants/Respondents

Ms. Atema for the Plaintiffs/Applicants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

