



**Wanau v Kioi (Environmental and Land Originating Summons
E001 of 2025) [2025] KEELC 4334 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4334 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2025
MN GICHERU, J
JUNE 9, 2025**

BETWEEN

JOHN WAINAINA WANAU APPLICANT

AND

ESTON KAMAU KIOI RESPONDENT

RULING

1. This ruling is on the notice of motion dated 7-1-2025. The motion which is by the Plaintiff seeks the following residual orders.
 3. That status quo with regards to L.R. No. Loc.1/Kiriaini/661, suit land, maintained pending the hearing and determination of this suit.
 4. That an order of restriction be issued barring any dealings with the suit land pending the hearing and determination of this suit.
 6. A temporary injunction be issued restraining the Respondent, his employees, servants, agents or any other person claiming through him from alienating, transferring, disposing and/or dealing with the suit land pending the hearing and determination of this suit.
 7. The costs of this application be provided for.
2. The motion which is brought under Sections A1, 1B and 3A of the *Civil Procedure Act*, Orders 37 rule 6, 40 rules 1 and 2 of the Civil Procedure Rules, Section 38 of the *Limitation of Actions Act* and all enabling provisions of the law is based on four(4) grounds and is supported by two(2) affidavits and four(4) annexures. The gist of the above material is as follows. Firstly, the Plaintiff has been in possession of the suit land since 1996. Secondly, the original entry was non-permissive. Thirdly, the occupation has been peaceful. Fourthly, the Plaintiff claims that he is entitled to the suit land by way of adverse possession. Fifthly, the register shows that the suit land is registered in the name of Defendant.



Sixthly, the Plaintiff also owns L.R. No. Loc.1/Kiriaini/1235 which is adjacent to the suit land. Finally, in the year 2021, the Plaintiff instituted suit No. Kandara PMCC MCELC EO36 of 2022 which was not successful because the Court had no jurisdiction.

3. The motion is opposed by the Defendant who has sworn a replying affidavit dated 27-2-2025 which has four (4) annexures. He replies as follows. Firstly, though the Plaintiff claims possession, he has not said how he entered and remained on the suit land.

Secondly, the receipts from Kenya Tea Development Authority (KTDA) exhibited by the Plaintiff are not proof of occupation of the suit land for 12 years because they do not indicate the land on which the tea grows. Thirdly, the suit land was previously registered in the name of Francis Muigai Kioi, the Defendant's uncle, who passed away in the year 2018. Fourthly, the said Francis Muigai Kioi was in occupation, possession and use of the suit land until his demise in the year 2018 and during his lifetime, no suit was ever filed claiming the suit land in any court within the Republic of Kenya. Fifthly, after the death of Francis Muigai Kioi, the Defendant and his father petitioned for the grant of letters of administration intestate in Succession Cause No. 383/2018 at Thika Magistrate's Court. During the succession proceedings, the Plaintiff made allegations that his late father Wanau Mairi had bought the suit and he was therefore entitled to the land. His protest was dismissed. Sixthly, the succession cause was finalized in the year 2022 and the suit land transmitted to the Defendant. The Defendant took possession and planted crops on the suit land. The Plaintiff has on several occasions trespassed onto the suit land and uprooted the Defendant's crops and this has been reported to Kirwara Police Station. Finally, neither the Applicant, nor his father have ever occupied the suit land. For the above and other reasons, the Defendant prays that the motion dated 7-1-2025 be dismissed with costs.

4. Counsel for the parties filed written submissions dated 16-4-2025 and 22-4-2025 respectively and they identified the following issues for determination.
 - i. Whether the Plaintiff has demonstrated that he has a prima facie case with a probability of success.
 - ii. Whether he has shown that he will suffer injury which would not be adequately compensated by an award of damages.

5. I have carefully considered the motion in its entirety including the grounds, the three affidavits on record and the annexures. I have also considered the written submissions and the law cited therein. Since each party claims to be in occupation, I find that it is prudent to await the trial to determine that key issue at the conclusion of the suit because the issue is at the heart of the dispute. Given this scenario, the Court is inclined to order that the status quo as appertains to registration of suit land be maintained so that it is not alienated pending the determination of the suit.

Consequently, I hereby order there shall be no dealings with the suit land until this suit is heard and determined.

Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 9TH DAY OF JUNE, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -



Court Assistant – Mwangi Njonjo
Plaintiff's Counsel – Mr. Gatonye
Defendant's Counsel – Miss Kabata

