



REPUBLIC OF KENYA



KENYA LAW
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Chitwah (Suing in His Capacity as the legal Administrator of Benson Chitwah Mandu) v Anyula (Enviromental and Land Originating Summons E009 of 2025) [2025] KEELC 5266 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5266 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E009 OF 2025

E ASATI, J

JULY 10, 2025

BETWEEN

MOWAT'T MORETHAN CHITWAH (SUING IN HIS CAPACITY AS THE LEGAL ADMINISTRATOR OF BENSON CHITWAH MANDU) PLAINTIFF

AND

JAMES ANYULA ANYULA DEFENDANT

RULING

1. This ruling is in respect of the Plaintiff's Notice Motion application dated 6th May 2025 expressed to be brought under the provisions of Order 51 Rule 1 and Order 24 Rule 4(i), Order 40 Rules 1 and 2 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the *Civil Procedure Act*.
2. The application seeks for orders that; -
 - a. Pending hearing and determination of the Originating Summons herein an order of temporary injunction do issue restraining the defendant, his agents and/or servants from interfering with the plaintiff's use, possession and occupation of the suit land No. Weat Bunyore/Essaba/1654 and/or evicting him therefrom.
 - b. That the OCS Embali police station be ordered to enforce this order.
 - c. Costs of this suit be provided for.
3. The application was supported by the contents of the Supporting Affidavit sworn by the applicant on 6th May 2025 and the annexures thereto.
4. The application was opposed vide the contents of the Replying Affidavit sworn by James Anyula Anyula, the Respondent, on 28th May 2025. The Respondent's case as contained in the Replying Affidavit is that he resides on and farms the suit land. That he has had open, peaceful, uninterrupted



and continuous possession of the suit land on which he has developed and built a permanent residential house and a pit latrine and planted maize, bananas and trees.

5. That the plaintiff and his agents entered the land in April, 2025 and cut down the trees and plantations which incident he reported to the police. That neither Benson Chitwa Mandu, deceased, nor the plaintiff have been in occupation of the suit land. That the plaintiff's allegations of adverse possession are false. That he has never granted the applicant nor the deceased any license or permission to occupy or use the suit land and that the applicant's recent actions amount to trespass and criminal damage to property.
6. The application was heard by way of written submissions. It was submitted on behalf of the applicant vide the written submissions dated 19th June 2025 filed by the firm of Morigori Ondieki & Co. Advocates that the applicant is seeking protection of the law from interference of the defendant on land parcel No, Weat Bunyore/Essaba/1654. That the basis of the applicant's claim is that he has been in use, possession and occupation of the suit land for over 12 years and has therefore acquired overriding interest or right thereof under section 28(h) of the [Land Registration Act](#) and that the rights of the Respondent have become extinguished by operation of law or that the Respondent's rights to recover the suit land are time barred by virtue of the provisions of Section 7 of the [Limitation of Actions Act](#) Cap 22 of the Laws of Kenya.
7. That the court has a duty to protect the applicant's right by way of injunction. That the right cannot be enforced in a succession cause as alleged by the Defendant. That it is important that the status quo be maintained pending determination of the claim of adverse possession. Counsel relied on the cases of Vihiga ELC Appeal No. 8 of 2023 Martha M'Mbaye Luvae -vs- Naftali Amimo, Kisii ELC case No. 7 of 2021 Catholic Diocese of Kisii -vs- Alvin Magange and Estate of Solomon Mwangi Waweru (Deceased) 2018 KLR.
8. On behalf of the Respondent written submissions dated 30th June 2025 were filed by the firm of Betty Wamukore & Owiti, Company Advocates. Counsel submitted that there is no proof furnished by the plaintiff/Applicant that they are in possession of the suit land. That the plaintiff's claim is anchored on the chief's letter which is not proof of ownership. On whether the applicant will suffer irreparable harm, Counsel relied on the case of Nguruman Limited -vs- Bonde Nielsen & 2 others (20140 eKLR and submitted that the applicant has not proved the same. That the defendant is the registered owner of land parcel No. Weat Bunyore/Essaba/1654 which he obtained vide Succession Cause No. 211 of 2022. That the applicant did not raise any objection in the Succession Cause.
9. That sanctity of title to land is protected under sections 24, 25 and 26 of the [Land Registration Act](#). Counsel urged the court to exercise its inherent powers and not to evict the Defendant from the suit land.
10. The substantive relief sought is an order of temporary injunction. The grounds for grant of an order of temporary injunction as provided for in order 40 Rules 1 and 2 of the Civil Procedure Rules 2010 under which the application was brought, are that the applicant must prove that the property the subject matter of the suit is in danger of being wasted, destroyed and/or wrongly sold. Similarly, in the case of Giella vs Cassman Brown Co. Ltd (1973) 358 in order for an application for temporary injunction to succeed, the Applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt,



it will decide the application on a balance of convenience. A prima facie case was defined in *Mrao Ltd vs First American Bank Kenya Ltd & 2 Others* [2003] eKLR as including

“...but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

11. The grounds upon which the present application was brought are that the plaintiff is in use, possession and occupation of the suit land and has been using the same for over 30 years and has extensively developed the same. That the defendant has threatened to evict the plaintiff from the land. That the Defendants rights over the suit land have become extinguished by operation of law. That the Defendant’s rights to recover the land from the plaintiff are time barred by virtue of section 7 of the *Limitation of Actions Act*. That the plaintiff stands to suffer loss and damage if he is evicted from the suit land before the Originating Summons is heard and determined.
12. To the Supporting Affidavit, the applicant annexed a letter from the Chief dated July 2022 to the effect that one Benson Chitwa Mandu was claiming interest in the suit land parcel No. W/ BUNYORE/ Essaba/1654 which he was utilizing and which was erroneously registered in the name of one Anyula. The plaintiff deposed in the application that he is the legal representative of Benson Chitwa Mandu.
13. The plaintiff also annexed a copy of a letter dated 3rd February 2015 which was Notice to vacate land No. Weat Bunyore/Essaba/1654.
14. The plaintiff’s claim in the Originating summons is based on adverse possession wherein he claims that he has been in occupation of the suit for a period in excess of 12 years and hence acquired title thereto.
15. He hence seeks to preserve the prevailing status quo pending hearing of the main suit. The defendant claims that he is in possession of the land and urged the court to exercise its inherent jurisdiction and ensure that he is not evicted from the land.
16. I have carefully perused the evidence placed before the court by the parties, I have read the letter from the Chief stating that the deceased was claiming interest in the suit land which he was utilizing and although this may not be conclusive proof of occupation/possession, it is at least evidence from the local administration of the area where the land is situate that the deceased was utilizing the suit land. The letter does not show whether it is the entire of the suit land that the deceased was utilizing
17. Further, the letter by the Defendant’s Counsel dated 3rd February 205 titled “Notice to vacate land Weat Bunyore/Essaba/1654” and addressed to the applicant required the applicant to, with immediate effect and without further delay, vacate the suit land which was in use of the applicant or the applicant’s agents.
18. From this letter, it is clear that as at the date of the letter, the applicant was in use of the suit land. The existence or contents of this letter were not denied. It cannot there be said that the applicant only entered the suit land in April 2025 as contended by the Defendant. The current status of the suit land as demonstrated to the court therefore is that the applicant is in use and occupation of the land and that the land is registered in the name of the Respondent. It is in the interest of justice that this status quo be maintained pending hearing of the suit.
19. Whether the applicant’s presence on the land has amounted to adverse possession or is just an act of trespass and criminal destruction of property or whether the Respondent’s rights have become extinguished are matters to be canvassed in the hearing of the main suit.



20. The court finds that the applicant has proved the grounds for grant of an order of temporary injunction and hereby allows the application as follows:

- i. Pending the hearing and determination of the Originating Summons herein, an order of temporary injunction is hereby issued restraining the Defendant, his agents and/or servants from evicting the applicant from and from interfering with the applicant's use of the suit land parcel number Weat Bunyore/Essaba/1654.
- ii. Costs to abide the main suit.

Orders accordingly.

**RULING DATED AND SIGNED AT VIHIGA AND READ THIS 10TH DAY OF JULY 2025
VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

Owiti for the Defendant

N/A for the applicant.

