**Mose v Murege & another (Enviromental and Land Originating Summons E023 of 2024) [2025] KEELC 5013 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5013 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

**ENVIROMENTAL AND LAND ORIGINATING SUMMONS E023 OF 2024**

**JO OLOLA, J**

**JULY 4, 2025**

**BETWEEN**

**ERIC NDEGO MOSE ..... PLAINTIFF**

**AND**

**MANASE MAINA MUREGE ..... 1ST DEFENDANT**

**MOMBASA COUNTY GOVRENMENT ..... 2ND DEFENDANT**

**RULING**

1. By the Notice of Motion dated 19th December, 2024, Erick Ndego Mose (the Plaintiff) prays for an order that pending the hearing and determination of the suit an order of injunction do issue restraining the two Defendants from in any way demolishing the Plaintiff's structures/developments and/or interfering, evicting the Plaintiff and his tenants from occupying and operating their businesses from a portion of land on title No. CR 63124 sub-division No. 17651 Section 1 Mainland North fronting a minor road neighbouring apartments known as Gaya Flats at Mwembelegeza, in Bamburi Mombasa.

2. The application which is supported by an Affidavit sworn by the Plaintiff is premised on the grounds that:

    i. Since January, 2006, the Plaintiff has been in occupation of the said portion land;

    ii. The Plaintiff has invested in the full view of all by developing permanent structures/houses on the said portion of land and has been in uninterrupted possession and occupation with his tenants for a period of over 12 years as contemplated by the law and hence acquired rights over the same by way of adverse possession.

    iii. On 18th December, 2024, the 1st Defendant and officers from the 2nd Defendant visited the Plaintiff's premises carrying out what they purported to be a survey on the area occupied by the Plaintiff and his tenants at which time they verbally threatened that in the cause of December,

2024 to January, 2025, an eviction and demolition operation shall be carried out to take away possession from the Plaintiff and give the portion of land to the 1st Defendant;

iv. The Defendants' threats are unlawful as possession and demolition in the circumstances can only be sanctioned through due process;

v. The Plaintiff and his tenants shall suffer irreparable loss if the intended unlawful eviction and demolition is not restrained through an order of the court; and

vi. Being a land dispute with massive developments thereon which have been in place for over 12 years now it is fair and just that the status quo be maintained pending the determination of the suit.

3. Manase Maina Murege (the 1st Defendant is opposed to the application. In his Replying Affidavit sworn on 27th January, 2025, the 1st Defendant avers that he is the proprietor of the sub-division No. 17651 Section 1 Mainland North as stated and demonstrated in the Supporting Affidavit filed by the Plaintiff.

4. The 1st Defendant asserts that the suit property was transferred to himself upon purchase in the year 2007 and that he had held the same as a portion of a whole in common with a third party. The 1st Defendant further asserts that in 2014, he was granted a separate title to the suit property after sub-division thereby acquiring exclusive title to the same.

5. The 1st Defendant who states that he resides in Switzerland further avers that when he returned to Kenya in 2014, he found some "Mabati" structures on his parcel of land and that he confronted the Plaintiff and the Plaintiff promised to demolish the same. The 1st Defendant avers that he thereafter left for Switzerland hoping that the Plaintiff would keep his promise and abolish the structures.

6. The 1st Defendant further avers that upon his return to Kenya in 2019, he was shocked to find that the Plaintiff has constructed permanent structures on the property in the form of rental shops for business. He depones that he then called the Plaintiff and asked him to demolish the same but the Plaintiff declined insisting that his structures were on a road reserve and not on the suit property.

7. The 1st Defendant further depones that in July, 2024, he came back to Kenya to address the issue of the illegal structures and that he first sought the assistance of the Area Chief who directed him to the offices of the 2nd Defendant. Upon hearing from him and visiting the suit property, the 2nd Defendant caused to be issued a notice to demolish the illegal structures.

8. The County Government of Mombasa (the 2nd Defendant) is equally opposed to the application. By their Grounds of Opposition dated 20th February, 2025, the 2nd Defendant is opposed to the application on the grounds stated therein as follows:-

1. The application and the suit is incurably defective, bad in law, improperly before this court and the same is misconceived in both law and facts;

2. The application and the suit has not disclosed any reasonable cause of action against the 2nd Defendant and same is scandalous, frivolous or vexatious and the entire suit (be) dismissed;

3. The Applicant lacks capacity and/or Locus Standi to bring the application and the entire suit;

4. The Applicant has not established any prima facie case against the 2nd Defendant with a probability of success.

5. The orders sought cannot be granted against the 2nd Defendant reasons being that the suit property is private suit property and the certificate of title was issued by the National

Government but not issued by the 2nd Defendant and thus the Plaintiff has not (sic) claim at all against the Defendants; and

6. The Application has no basis in law to warrant the Plaintiff to be granted injunctive orders against the 2nd Defendant and the same to be dismissed with costs to the 2nd Defendant.

9. I have carefully perused and considered both the application and the respective responses thereto. I have similarly perused and considered the submissions filed by the Learned Advocates representing the Plaintiff and the 1st Defendant. I was unable to find any submissions lodged on the part of the 2nd Defendant.

10. By his application before the court, the Plaintiff prays for an order of injunction to issue restraining the Defendants from demolishing certain developments he has made on the suit property and thereby evicting the Plaintiff and his tenants therefrom.

11. The principles upon which the court may consider an application for injunction were long laid out in the celebrated case of Giella –vs- Cassman Brown (1973) EA 358. The Applicant must first demonstrate a prima facie case with a probability of success; secondly, the court will not normally grant an injunction unless the applicant stands to suffer irreparable loss which cannot be compensated by an award of damages; and finally, where there is doubt the court decides the matter on a balance of convenience.

12. Reiterating those principles in Nguruman Limited –vs- Jan Bonde Nielsen & 2 Others, *CA No. 77 of 2012* (2014) eKLR, the Court of Appeal held that:

> "In an interlocutory injunction application, the applicant has to satisfy the triple requirements to, a, establish his case only at a prima facie level, b, demonstrate irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.
>
> These are the three pillars on which rests the foundation of any order of injunction interlocutory, or permanent. It is established that all the above three conditions and steps are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially."

13. As to what would amount to a prima facie case in a matter such as this, the Court of Appeal pronounced itself in Mrao Ltd. –vs- First American Bank of Kenya Ltd. (2003) eKLR as follows:

> "...in Civil Cases, it is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."

14. In the matter before me, the Plaintiff asserts that he has been in occupation of a portion of the suit property since January, 2006 and that he has developed the said portion by putting up permanent structures which he has since rented out to various tenants. It is the Plaintiff's case that he has been in possession and occupation of that portion of the land for an interrupted period in excess of 12 years and that he has therefore acquired rights thereto by way of adverse possession.

15. The 1st Defendant does not deny that the Plaintiff has built permanent structures on a portion of the suit property which is registered in his name. The 1st Defendant however disputes the Plaintiff's claim that he has been on the suit land since the year 2006. According to the 1st Defendant who resides in

Switzerland, he did purchase the suit property in the year 2007 but it was only upon his return in the country in the year 2014 that he found some "Mabati" (iron Sheet) structures on the land.

16. The 1st Defendant avers that when he confronted the Plaintiff about the structures, the Plaintiff promised him that he would demolish the same. According to the 1st Defendant, the Plaintiff did not keep this promise and he was shocked when he subsequently returned to the country in the year 2019 to find that the Plaintiff had constructed permanent structures on a portion of the property in the form of rental shops for business.

17. As was stated in Mbuthia –vs- Jimba Credit Corporation Ltd. (1988) KLR 1:

> "...in an application for interlocutory injunction, the court is not required to make final findings of contested facts and the law and the court should only weight the relative strength of the parties' cases."

18. From the material placed before the court, it was not disputed that the Plaintiff has constructed permanent buildings on the portion of the suit land to which he lays his claim of adverse possession. While the Plaintiff states that he made the constructions when he first entered the land in the year 2006, the 1st Defendant holds that the structures were only erected between the years 2014 and 2019.

19. It will be noted that more than 12 years would have passed since the year 2006 that the Plaintiff claims to have first entered the portion of land that he claims. The 1st Defendant resides abroad and is not himself certain when the structures were erected on his property. That being the case, it is probable that the Plaintiff has been on the portion of land for a duration of over 12 years. This court cannot tell at this stage the exact duration and whether or not such possession has been quiet and uninterrupted to justify the Plaintiff's claim for adverse possession. That is a matter that will only reveal itself at the hearing of this matter.

20. From the material placed before the court so far, I am satisfied that the Plaintiff has laid out a prima facie case with a probability of success. The Plaintiff no doubt stands to suffer irreparable loss if he and his tenants are evicted prior to the hearing and determination of this suit.

21. I am also satisfied that the balance of convenience, in the circumstances of this case, also lies in favour of preserving the status quo, which as demonstrated, is that the Plaintiff and his tenants are in possession of the portion of land that the Plaintiff claims to have acquired prescriptive rights to. That possession in my view ought not be disturbed pending the hearing and determination of this matter.

22. As was stated in Pius Kipchirchir Kogo –vs- Frank Kileli Tenai (2018) KEELC 2424 (KLR):

> "The court should issue an injunction where the balance of convenience is in favor of the plaintiff and not where the balance is in favor of the opposite party. The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor 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 would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer. In other words, the plaintiffs have 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 it."

23. In the circumstances herein, it has been demonstrated that the Plaintiff has constructed business premises on a portion of the land in dispute. In his Replying Affidavit to the application, the 1st Defendant has asserted that the 2nd Defendant County Government has already issued a notice to demolish the buildings which he describes as illegal structures. That being the case I am persuaded that there is every likelihood of the same being demolished and the Plaintiff and his tenants being evicted from the suit property before this suit is heard and determined.

24. In the premises, I do find merit in the Motion dated 19th December, 2024 and hereby allow the same in terms of prayer No. 4 thereof.

25. The costs of the application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4TH DAY OF JULY, 2025**

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**J.O. OLOLA**

**JUDGE**

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Nyabena Advocate for the Applicant/Plaintiff

Mr. Okere Advocate for the 1st Defendant

No appearance for the 2nd Defendant