



**Mwake v Gatundu (Environment and Land Case 9 of 2017)  
[2025] KEELC 5999 (KLR) (11 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 5999 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND CASE 9 OF 2017  
AK BOR, J  
SEPTEMBER 11, 2025**

**BETWEEN**

**ALEXANDER NYAGA MWAKE ..... PLAINTIFF**

**AND**

**JAMES MWANGI GATUNDU ..... DEFENDANT**

**RULING**

1. The defendant brought the application dated 13/3/2025 seeking a temporary injunction to restrain the plaintiff from entering, tilling, leasing or interfering or dealing with a portion of the land known as Nthawa/Riandu/1029 that the plaintiff does not claim to occupy pending the determination of the suit.
2. The application was made on the grounds that the plaintiff filed this suit claiming 7 acres out of Nthawa/Riandu/1029 measuring approximately 14 acres through adverse possession. The defendant claimed that the plaintiff has invaded the whole portion of the land and was putting up structures and that he had leased a portion measuring seven acres that he does not lay claim to, to unsuspecting members of the public. It was averred that the actions of the plaintiff were prejudicial to the defendant who has miraa stems on the remaining portion which should not be interfered with. It was urged that unless restrained, the plaintiff was likely to occupy or lease the whole parcel of land to the detriment of the defendant. The Defendant expressed the desire to start preparing his land for planting and urged that there would be breach of peace and security if the plaintiff is not restrained from interfering with the suit land.
3. The plaintiff opposed the application vide a replying affidavit, in which he deponed that he lives and utilizes a portion of the suit land measuring 7 acres while the rest of the land which measures 6.5 acres, previously occupied and utilized by his late mother, is currently utilized by his sister and her children after the death of his mother. He denied that the defendant had ever utilized the land since 1971 when he claims to have occupied the land or that he had any miraa on the land. He contended that the



miraa belonged to his sister, her children and himself and that since the sister is not a party to this case, the defendant cannot seek orders against her. He averred that through the instant application, the defendant seeks to evict him and his sister from the suit land which is unprocedural and illegal. He urges that the application be dismissed.

4. The defendant filed a further affidavit where he deponed that the suit land borders the plaintiff's mother's land being Nthawa/Riandu/1027 which the plaintiff's mother used to utilize. He added that the plaintiff's mother unsuccessfully laid claim to the suit land but had never occupied the land. He denied that the plaintiff or any of his family members lived on the suit land and expounded that were it that the plaintiff's sister was to be in occupation as claimed, she could have sought adverse possession just as the plaintiff did.
5. The court directed parties to file and exchange written submissions, which it has considered. The defendant mainly reiterated the facts raised in his affidavits and submitted that he had met the threshold for grant of an injunction as established in *Giella v Cassman Brown* [1973] EA 358. He submitted that he had demonstrated that the plaintiff has no interest in the 7 acres the subject matter of this application and therefore he will lose nothing if the court allows the application.
6. The plaintiff submitted that the defendant had not met the requirements for grant of an injunction. He reiterated that the defendant does not utilize the land but is trying to enter the land with the intention to evict the lawful proprietors from the land.
7. The principles governing the grant of temporary injunctions are well settled in *Giella v Cassman Brown & Co. Ltd* (1973) EA 358. A party must demonstrate a prima facie case with a probability of success, that they stand to suffer irreparable harm that cannot be adequately compensated by an award of damages; and if the court is in doubt, it will decide the matter on a balance of convenience.
8. Applying the first principle, the defendant's case is that the plaintiff is extending his occupation beyond the portion he claims through adverse possession, thereby infringing on land that is not the subject of the suit. The defendant argued that unless restrained, the plaintiff would continue to interfere with the land to his detriment. The plaintiff contended that the remaining portion of land that he is not claiming was being used by his mother and that upon her demise, his sister and her children currently use the land. He was emphatic that the defendant had never occupied the land.
9. The court notes that the plaintiff's claim in the main suit is for adverse possession of seven acres. By his own admission, he does not claim the entire parcel of land but only a portion of it. He stated that part of the land is being used by his sister and her children who are not parties to this suit. The defendant has raised concerns about the plaintiff's recent activities of putting up structures and leasing land beyond the seven acres which he claims to be entitled to through adverse possession. If those claims are true, then the facts would exceed the scope of the adverse possession claim and will certainly prejudice the defendant's interest in the land. The defendant has demonstrated a prima facie case.
10. If the plaintiff or persons claiming through him continue to interfere with or utilize the remaining portion of the land that is not the subject matter of the claim to adverse possession, then the defendant will suffer irreparable harm as proprietor of the land. Since the plaintiff's claim is only for 7 acres and not the remaining portion of land, the balance of convenience tilts in favour of granting the injunction.
11. The application dated 13/3/2025 is allowed. The costs shall be in the cause.

**DELIVERED VIRTUALLY AT NAIROBI THIS 11<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**K. BOR**

**JUDGE**



**In the presence of: -**

Ms. Pamela Kimathi for the Plaintiff

No appearance for the Defendant

