



REPUBLIC OF KENYA



**Yiampoi v Muchiri & another (Environmental and Land Originating Summons
E006 of 2025) [2025] KEELC 6103 (KLR) (22 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6103 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2025
MN MWANYALE, J
SEPTEMBER 22, 2025**

BETWEEN

JACKSON LETAATI YIAMPOI APPLICANT

AND

JOHN MACHARIA MUCHIRI 1ST RESPONDENT

DANIEL TUKERO 2ND RESPONDENT

RULING

1. The Notice of Motion Application dated 28th March 2025, filed by Jackson Letaati Yiamoi, seeks injunctive reliefs against the Respondents in terms; -
 - i. Spent.
 - ii. Spent.
 - iii. That pending the hearing and determination of this suit, this Honourable court be pleased to grant a temporary injunction restraining the Respondents whether by themselves, their agents, servants and/or anybody acting under their directions or claiming against/through them from trespassing, encroaching, demolishing/erecting structures thereon, disposing, transferring, alienating, selling, charging or in any way wasting land parcel number Transmara/Oloontare104.
 - iv. The costs of this application be provided for.
 - v. The Honourable court be pleased to make such further or other orders as it may deem just and expedite in the circumstances of this case.
2. The application is supported by the supporting affidavit of the Applicant who deposes interalia,



- i. That he is the beneficial owner of land parcel No Transmara/Oloontare/104 measuring 3.8 Ha initially registered in the name of the 1st defendant/Respondent who transferred it to the 2nd Defendant/Respondent.
 - ii. That he had been growing sugar cane thereon for over 50 years, and placed a caution on the suit land which was removed unprocedurally by the 1st Defendant who transferred it to the 2nd Defendant.
 - iii. There was danger of eviction and destruction of his sugar cane crops to his detriment.
 - iv. The Applicant as deponent annexed a copy of title deed in respect of the suit property in the name of the 1st Defendant, a copy of green card of the suit property. Photographs of sugar cane, letters from Transmara sugar company, statements of accounts from Transmara sugar company Agreement for sale between the 1st and 2nd Respondents; Ruling in Kilgoris CMELC No. E024/2024.
3. In opposition to the application were two Replying affidavits sworn separately by the 1st and 2nd Respondents respectively.
 4. In his Response the 1st Defendant/Respondent deposed that
 - i. The whole claim of adverse possession was baseless as the facts pleaded were falsified.
 - ii. The Respondent deposed that he has applied in 1983 to be allocated land during the adjudication of Oloontare adjudication section, and no one was in occupation of the same.
 - iii. That he started farming on the parcel in 1990 together with a Mr. Lazaro Ntuite (now deceased) the Applicant lodged a caution in 2002 which caution was removed after hearing in 2005.
 - iv. The Applicant began farming on suit property in 2018 and the 1st Respondent got tired of threats from the Applicant and sold to the 2nd Respondent. Thus, the Applicant has not been in occupation for over 12 years and does not qualify to be an adverse possessor; hence the Application ought to be dismissed.
 - v. The Respondent exhibited through annexures a copy of the Agreement for sale, copy of orders and Ruling issued in Kilgoris CMELC No. E024/2024.
 5. On his part, the 2nd Respondent Daniel Tukero deposed inter alia that;
 - i. The adverse possession claims are baseless, the Applicant had attached a house in a neighbouring parcel, and that the claim has now mutated from residing on the disputed parcel as was in the earlier suit before the chief magistrate's court to now cultivation.
 - ii. The claim is contradicting as the Applicant claims on the land to have been on suit land for over 30 years and on the other hand to have been in occupation for 50 years.
 6. The Application proceeded by way of oral submissions, the Applicant submitting that there had been orders of status quo issued by the subordinate court which orders had been issued by consent confirming his occupation of the suit property
 7. The Applicant in view of the consent orders submits that he has established a prima facie case and having raised issue of adverse possession they would suffer loss and damages; and damages would not be a proper remedy. He submitted that the balance of convenience equally tilts in his favour.



8. In Response, the Respondents counsel Ms. Kwanga submitted that the applicant had not established a prima facie case as he had not proven the elements of adverse possession under section 7 and 13 of limitations of Actions Act.
9. The Applicant had a forced entry and had not lived more than 12 years on the suit property, occupation having commenced in 2018 in a clandestine manner.
10. On irreparable damage, one cannot benefit from their own doing there is no occupation as the photographs belong to another suit property.
11. On the strength of the above the Respondent sought for dismissal of the Application.
12. It is common ground between the parties that there was a previous suit filed at the Kilgoris CM court between the parties over the said subject matter where the Applicant had obtained orders of maintenance of status quo which orders were exhibited by both parties.

Issues for Determination

13. The issues emerging from the Application, the Respective replies submissions of the parties are
 - i. Whether the application is merit, and in determining this, the court shall consider whether the threshold for grant of an injunction has been met.
 - ii. Whether what reliefs ought to issue.
 - iii. Who bears the costs of the application?

Analysis and Determination?

14. It is the Applicant's contention that he has been in occupation of the suit property for about 30 years. He exhibited statements of accounts from Transmara sugar Co. Ltd, the said statements related to the years 2021 and 2022. There is a caution that he had registered on the suit premises on 30.01.2002 claiming beneficiary interest.
15. His occupation of the suit property is highly contested by the Respondents.

Noting that the matter is at the interlocutory stage, and without having to determine the issue of occupation which shall be determined at trial, the court finds no prima facie evidence, of occupation by the Applicant save for cultivation of sugar cane by way of the photographs.

No other photographs were exhibited of the suit property to show the occupation.
16. The court thus finds that no prima facie case has been established, and will not require to enquire into the two other conditions in the Giella Vs. Cassman Brown as was held in the case of Kenya Commercial Finance Company Ltd Vs. Afraha Education Society (2001) I.E.A 86. where the court held inter alia "..... if prima facie case is not established then irreparable injury and balance of convenience need no consideration..."
17. It follows thus that the prayer for an injunction as prayed for is declined.
18. The court is cognizant that the Applicant has planted sugar cane on the suit properties in view of the annexures herein, and hence to preserve the suit property the court issued an order for maintenance of status quo under practice direction 28K issued under Gazette Notice No. 5178/2014, which empowers the court to issue the said status quo orders.



19. The status quo issued herein is defined in terms that the Plaintiff/Applicant is to be allowed access to the suit property in relation to the current crop of sugar cane, but not to plant another crop, and the status quo on the register is to suit property to remain in the name of the 2nd Defendant/Respondent the current registered owner.
20. The court thus orders maintenance of status quo pending hearing and determination of the suit, in the manner defined above.
21. Costs of the application shall be in the cause.

DATED AT KILGORIS THIS 22ND DAY OF SEPTEMBER, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Tawo for Plaintiff/Applicant

Ms. Kwanga for Defendant/Respondent

