



**Maritim v Tele (Enviromental and Land Originating Summons
13 of 2023) [2024] KEELC 6443 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6443 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 13 OF 2023
LA OMOLLO, J
OCTOBER 3, 2024**

BETWEEN

RICHARD KIPKOROS MARITIM APPLICANT

AND

PHILIP KIPRONO TELE RESPONDENT

RULING

Introduction.

1. This ruling is in respect of the Applicant's Notice of Motion application dated 6th December, 2023. The said application is expressed to be brought under Order 40 & Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B & 3A of the *Civil Procedure Act*.
2. The application seeks the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit, an injunction do issue restraining the Defendants whether by themselves, their agents and/or servants, from selling, sub-dividing, charging, transferring, encroaching on and/or interfering with the Plaintiff's quiet possession of 1.55 acres of land comprised in LR No. Kericho/Roret/1508.
 - d. Spent
 - e. That pending the hearing and determination of this suit this Honourable Court be pleased to issue an order of inhibition restraining any dealings, registration and transactions whatsoever over that land parcel known as LR No. Kericho/Roret/1508.
 - f. That costs of this application be provided for.



- g. That necessary directions be made.
3. The application is based on the grounds on its face and the supporting affidavit of one Richard Kipkoros Maritim sworn on 6th December, 2023.

Factual background.

4. The Applicant commenced the present proceedings vide the Originating Summons dated 6th December, 2023 wherein he seeks determination of the following questions;
- a. Whether the Applicant is entitled to 1.55 acres of land comprised in the land parcel LR No. Kericho/Roret/1508 registered in the Respondent's name by virtue of his adverse possession of the said parcel in an open, uninterrupted, quiet and peaceful manner for a period of over 20 years.
 - b. Whether the Applicant herein should be registered as proprietor of the said 1.55 acres (one decimal five five) in place of the Respondent who is the current registered owner/proprietor of LR No. Kericho/Roret/1508.
 - c. That the costs of this suit be provided for.
5. On 29th January, 2024 the Respondent filed Grounds of Opposition in response to the application under consideration and the Originating Summons.
6. The application under consideration first came up for hearing on 11th December, 2023 when the Court directed that it be served upon the Respondent herein.
7. On 29th February 2024 the Court directed that the application be disposed of by way of written submissions.
8. On 5th June, 2024 parties confirmed having filed submissions and the application was reserved for ruling.

The Applicant's Contention.

9. The Applicant contends that the Respondent is the registered owner of LR No. Kericho/Roret/1508.
10. The Applicant also contends that in the year 1998 he purchased a portion of land parcel No. Kericho/Roret/1186 measuring two acres from the Respondent at a consideration of Kshs. 200,000/=.
11. The Applicant further contends that after completion, land parcel No. Kericho/Roret/1186 was subdivided into land parcel No. Kericho/Roret/1508 measuring 1.29 Hectares and land parcel No. Kericho/Roret/1509 measuring 2 acres.
12. The Applicant contends that land parcel No. Kericho/Roret/1508 was registered in the Respondent's name while land parcel No. Kericho/Roret/1509 was registered in his name.
13. It is his contention that later in the same year, the Respondent offered to sell to him an additional one acre comprised in land parcel No. Kericho/Roret/1508 for a consideration of Kshs. 120,000/=.
14. It is also his contention that the sale agreement was executed on 4th September, 1998 and he paid the purchase price in full.
15. It is further his contention that upon completion of payment of the consideration, the Respondent gave him vacant possession of the one acre. He took possession and established his home in the year 1999.



16. He contends that pursuant to the said agreement, the Respondent sought to obtain the consent of the Land Control Board to subdivide Land parcel No. Kericho/Roret/1508. The said consent was granted and land parcel No. Kericho/Roret/1508 was subdivided into land parcel No's Kericho/Roret/1413 and 1414.
17. He also contends that the Respondent executed mutation forms with respect to land parcel No. Kericho/Roret/1508 but they were not registered at the Lands office.
18. He further contends that he is advised by his advocates on record that as a result of the failure to register the mutation forms, the register for land parcel No. Kericho/Roret/1508 was not formally closed and the same exists to date.
19. It is his contention that the map was duly amended to reflect the resultant sub divisions namely land parcel No's Kericho/Roret/1413 and 1414.
20. It is also his contention that the Respondent secured the consent of the Land Control Board to transfer to him the one acre now comprised in land parcel No. Kericho/Roret/1414 on 15th November, 2000.
21. It is further his contention that before they could finalize transfer of the one acre, the Respondent proposed to sell to him a further 0.55 acres comprised in LR No. Kericho/Roret/1413 for a consideration of kshs. 93,500/=. He implored him to wait till they could finalize the transaction so that he could transfer the entire 1.55 acres to him at once.
22. He contends that owing to the Respondent's previous successful transfer of LR No. Kericho/Roret/1509 to him, he agreed to his proposal.
23. He also contends that as part of the settlement of the purchase price, he upon request, purchased for the Respondent a power saw for a sum of Kshs. 62,000/= after he visited him in Nairobi in the company of Benard Cheruiyot.
24. He further contends that he also paid a further sum of Kshs. 31,500 to the Respondent thereby completing the purchase price. They formalized their agreement on 8th February, 2001 after which the Respondent delivered vacant possession of the 0.55 acres to him.
25. It is his contention that the said agreements were consented to by the Respondent's spouse who affixed her signatures to the sale agreements.
26. It is also his contention that after taking possession of the aforesaid portions of land, he consolidated them, fenced and planted tea and other crops.
27. It is further his contention that he has been in open, quiet, continuous and uninterrupted possession of the 3.55-acre portion to date except for an incident that occurred on 6th September, 2023.
28. He contends that the Respondent has continuously promised to transfer the 1.55 acres to him but has never made good his promise.
29. He also contends that upon further persistence, the Respondent handed over to him the original title deed for land parcel No. Kericho/Roret/1508 and his passport photos as an assurance that he would transfer the land to him.
30. He further contends that it became apparent that the Respondent was reluctant to transfer the said portion to him but he did not interfere with his occupation.



31. It is his contention that sometime in 2010, the Respondent proposed to sell to him a further portion of land parcel No. Kericho/Roret/1413 but he declined the offer as he had failed to transfer the earlier portions of land he had bought.
32. It is also his contention that the Respondent later sold his remaining portion of land to Wilson Siele who bought 0.2 acres and the remaining 1.06 acres was bought by Daniel Malel.
33. It is further his contention that sometime in the year 2012 the Respondent moved out of Roret because he had sold his entire parcel of land.
34. He contends that on 15th February, 2023 he received a letter from the Chief summoning him to attend a family meeting that was to be held on 18th February, 2023 at Joel Tele's house.
35. He also contends that on the said date he went to Joel Tele's house but the meeting did not proceed as Joel Tele was not willing to have the meeting held in his home for the reasons that the Respondent had sold his entire portion of land.
36. He further contends that on 29th March, 2023 he received another letter from the Deputy County Commissioner summoning the Respondent's siblings and the persons who had purchased the suit property from the Respondent to a meeting to be held on 5th April, 2023.
37. It is his contention that at the said meeting, the agenda was on a dispute between the Respondent and his brother Joel.
38. It is also his contention that they were advised by the District Officer who was presiding over the meeting to seek the services of a surveyor to re-establish boundaries between their parcels of land.
39. It is further his contention that the Respondent sought the services of a surveyor who upon preliminary investigations concluded that land parcel No. Kericho/Roret/1508 did not exist in the Roret sheet map where the land is located.
40. He contends that on 6th September, 2023 the Respondent and his wife went to the Applicant's land and destroyed his boundary and that of his fellow purchaser Daniel Malel. In the process the Respondent fell trees that he had planted on his land.
41. He also contends that he reported the matter at Roret Police Station and the Respondent together with his wife were arrested later that day.
42. He further contends that while at the police station a person by the name Gilbert showed up claiming to be the Respondent's lawyer seeking for the release of the Respondent and his wife.
43. It is his contention that the said Gilbert and the Officer Commanding Police Station engaged them and asked them to settle the matter. They agreed subject to the confirmation of boundaries of land parcel No. Kericho/Roret/1508 as the Respondent claimed that there was an additional 0.3 acres which were unaccounted for.
44. It is also his contention that Daniel Malel, Wilson Siele and himself contributed Kshs. 4,000/= each and procured the services of a surveyor. The surveyor went and surveyed the land and concluded that indeed there was a discrepancy of 0.26 acres between the acreage in the title deed and the ground area for land parcel No's Kericho/Roret/1508 and 1509.
45. It is further his contention that the report did not explain where the discrepancy arose from or the size of land occupied by each of the purchasers.



46. He contends that the Respondent maliciously encroached on his portion of land and fell trees on 5th December, 2023.
47. He also contends that he is advised by his advocates on record that he is lawfully entitled to the one acre he bought in 1998, a further 0.55 acre that he bought in 2001 both comprised in LR No. Kericho/Roret/1508 which was subdivided into land parcel No's Kericho/Roret/1413 and 1414. The said subdivision was not completed even though that the Registry Index Map was amended to incorporate the purported subdivisions.
48. He further contends that he is advised by his Advocates on record that his entitlement arises by virtue of open, quiet and uninterrupted possession for a period of twelve years without the consent of the Respondent who is the registered owner.
49. It is his contention that the Respondent has interfered with David Malel's quiet possession and has since dispossessed him of 0.2 acres. The Respondent is in the process of putting up a house on the said portion.
50. It is also his contention that he is apprehensive that the Respondent may interfere with his quiet possession and dispose of his portion of his land comprised in land parcel No. Kericho/Roret/1508 to his detriment.
51. It is further his contention that he stands to suffer great prejudice unless his interests are safeguarded by injunctive orders restraining the Respondent and his agents from interfering with his quiet possession of the suit land and an order of inhibition restricting any dealings in the suit land until this Court hears and determines the suit.
52. He ends his deposition by stating that the balance of convenience tilts in his favour as he is currently in occupation of the said portion of land and that it is in the interest of justice that the application be allowed as prayed.

Respondent's Response.

53. In response to the Applicant's Notice of Motion application and Originating Summons, the Respondent filed Grounds of Opposition dated 29th January, 2024. The grounds of opposition are as follows:
 - a. That the Applicant's application dated 6th December, 2023 is procedurally and substantively bad in law and a clear misapprehension of law, misconceived, scandalous, frivolous or vexatious and contrary to the principles of natural justice hence suitable to be struck out.
 - b. That the suit property is an agricultural land which is subject to the *Land Control Act* (Cap 302).
 - c. That the *Limitation of Actions Act* is a general statute; the *Land Control Act* is a special legislation on the subject matter.
 - d. That the Applicant's claim against the Defendant arises out of land sale agreements and not founded on adverse possession.
 - e. That the Applicant's possession of part of the suit property commenced and continued in accordance with contracts exhibited by the Applicant, to which possession may be referred to legal and proper and it cannot be presumed adverse. (sic)



- f. That the acts of user by the Applicant invoking the statute of limitation to found his title are not enough to take the soil out of the Respondent in title and to vest it in the Applicant. (sic)
- g. That the Applicant's claimed portion of land in the suit property is not a definitely identified, defined or with a clear boundary or identification in view of the survey report exhibited by the Applicant in his supporting affidavit as "RKM 14".
- h. That the Applicant at no given time has he ever indicated to the Respondent of his intention to repudiate and or rescind the signed land sale agreements exhibited in the Applicants Supporting Affidavit as "RKM" 3 & "RKM"8. (Sic)
- i. That to claim title by virtue of purchase, and then to turn around and claim it by adverse possession is set up mutually self-destructive contradictions and confusion of thought. (Sic)
- j. That the Applicant is in violation of the provisions of Section 22 of the Land Control Act (CAP 302), a criminal offence which is punishable with a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.
- k. That granting the orders as prayed in the Applicant's Application dated 6th December, 2023 is tantamount to rewarding the criminal, to persist in an illegality, to commit a crime, and to do that which is prohibited by the law. (sic)

Applicant's Response to the Respondent's Grounds of Opposition.

- 54. In response to the Respondent's Grounds of Opposition, the Applicant filed a Further Affidavit sworn on 13th February, 2024.
- 55. He deposes that he is advised by his Advocates on record that the Respondent's Grounds of Opposition are based on a glaring misapprehension of the law.
- 56. He also deposes that he is further advised by his advocates on record that the provisions of the Land Control Act have no bearing in the instant suit as he is not seeking specific performance of a contract over land but agitating a claim of adverse possession.
- 57. He further deposes that the lack of the Land Control Board consent does not preclude the Court from giving effect to prescriptive rights as he has been in peaceful, open and quiet possession of the suit property for a period of over twenty years.
- 58. It is his deposition that his possession of the suit property is evidence of adverse possession even if the Respondent claims that the land sale agreement is likely to be void for lack of consent.
- 59. He ends his deposition by stating that the Respondent's Grounds of Opposition are borne out of misapprehension of the law and ought to be dismissed with costs.

Issues for determination.

- 60. The Applicant filed his submissions on 11th April, 2024 while the Respondent filed his submissions on 26th February, 2024.
- 61. The Applicant in his submissions sets out a summary of both his case and the Respondent's case and submits on the following issues;
 - a. Whether the Grounds of Opposition dated 29th January, 2024 is merited.



- b. Whether the Applicant has met the threshold for granting of the orders sought.
62. On the first issue the Applicant submits that the Respondent's arguments are that firstly, the suit property is agricultural land and is therefore subject to the Land Control Act and secondly, that his suit arises out of sale agreements and not founded on adverse possession.
63. The Applicant argues that even though the suit land is agricultural land, the provisions of the Land Control Act would only be applicable if the dispute herein was arising from the sale agreements entered between the Applicant and the Respondent.
64. The Applicant submits that from the pleadings, his claim is that of adverse possession and as such the provisions of the Land Control Act do not apply.
65. The Applicant relies on the judicial decisions of Public Trustee v Wanduru Ndegwa [1984] eKLR, Kasuve vs Mwaani Investments Limited & 4 Others [2004] eKLR and submits that the Respondent admits that he entered into various land sale agreements with him for the sale of the suit property.
66. The Applicant also submits that he paid the entire purchase price and since he has been in possession of the suit property, he is entitled to claim adverse possession.
67. The Applicant therefore argues that the Respondent's Grounds of Opposition dated 29th January, 2024 are devoid of merit and ought to be dismissed with costs.
68. With regard to the second issue, the Applicant relies on Giella vs Cassman Brown [1973] EA 358 and submits that he must establish a prima facie case, prove that he stands to suffer irreparable loss and if the Court is in doubt, consider where the balance of convenience lies.
69. The Applicant relies on Mrao Ltd versus First American Bank of Kenya Limited [2003] eKLR and submits that he has established a prima facie case. It is his submission that he purchased the suit property from the Respondent who has not disputed the sale and he is in occupation of the suit property. Further, the Respondent has encroached on his portion of the land and has maliciously damaged the property thereon.
70. The Applicant submits that he stands to suffer irreparable harm in the event the injunction is not granted as he has been in occupation of the suit property for a period of twenty years and has undertaken substantive developments thereon including building his matrimonial home, planting trees and crops.
71. The Applicant further submits that the Respondent has dispossessed one Daniel Malel who had also purchased a portion of land parcel No. Kericho/Roret/1508 measuring 0.2 acres.
72. It is the Applicant's submissions that the Respondent has on two occasions destroyed trees on the suit property and has been charged in Kericho Criminal Cause No. 3411 of 2023 for malicious damage.
73. It is also the Applicant's submissions that there is reasonable apprehension that the Respondent may further encroach and/or deal with the suit property in a manner adverse to the Applicant's interest.
74. It is further the Applicant's submissions that since he is in occupation of the suit property, the balance of convenience lies in his favour.
75. The Applicant relies on Re Estate of the Late Mwirichia Nkungi (Deceased) (Miscellaneous Succession Cause E012 of 2022) [2023] KEHC 2605 (KLR) (16 March 2023) (Ruling) and reiterates that since he has substantively developed the suit property and is in occupation, an inhibition order should issue.
76. The Respondent identifies the following issues for determination;



- a. Whether or not the Applicant is entitled to 1.55 acres of land comprised in the land parcel LR No. Kericho/Roret/1508 registered in the Respondent's name by virtue of adverse possession.
 - b. Who should pay costs for the application and/or the suit.
77. With regard to the first issue, the Respondent relies on the Indian judicial decision of *Bejoy Chundra vs Kally Prosonno* [1878] 4 Cal 1327, *Gabriel Mbui v Mukindia Maranya* [1993] eKLR and submits that adverse possession is a statutory method of acquiring title to land by occupation for a period of time without buying the land or under license from the owner with the intention to exclude all persons.
 78. The Respondent extensively submits on whether the Applicant has met the requirements for grant of an order of adverse possession while reiterating the grounds on his Grounds of Opposition.
 79. The Respondent relies on the judicial decision of *Gabriel Mbui vs Mukinda Maranya* [1993] eKLR and seeks that the Applicant's suit be dismissed.
 80. On the issue of costs, the Respondent relies on *Levben Products vs Alexander Films (SA) (PTY) Ltd 1957 (4) 225 (SR)* at 227 as was cited in *Party of Independent Candidate of Kenya & another vs Mutula Kilonzo & 2 Others* [2013] eKLR and seeks that he be awarded costs of the application and/or suit.

Analysis and Determination.

81. Having considered the application, the response thereto and the submissions, my view is that the following issues arise for determination;
 - a. Whether the Applicant has met the threshold for grant of temporary injunction pending the hearing and determination of this suit.
 - b. Whether an order of inhibition should issue pending the hearing and determination of the suit.
 - c. Who should bear costs of this application.

A. Whether the Applicant has met the threshold for grant of temporary injunction pending the hearing and determination of this suit.

82. The Court in *Giella vs. Cassman Brown* [1973] EA 358 stated the conditions for grant of temporary injunction as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the Court is in doubt it will decide an application on the balance of convenience.”

83. The Applicant has to first demonstrate that he has a prima facie case with a probability of success. In the judicial decision of *Mrao Limited vs. First American Bank of Kenya & 2 Others* [2003] eKLR the Court defined a prima facie case as follows;

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”



84. It is the Applicant's contention that he is entitled to a portion of land parcel No. Kericho/Roret/1508 registered in the name of the Respondent measuring 1.55 acres.
85. It is also the Applicant's contention that he had initially purchased an acre of the suit property before he later purchased an additional 0.55 acres. He consolidated the said portion and took possession.
86. It is further the Applicant's contention that he has been in peaceful occupation of the said portion of land until sometime in September 2023 when he alleges that the Respondent trespassed onto the said land and cut down trees.
87. The Applicant argues that he is apprehensive that unless the Court issues an injunction, the Respondent will continue encroaching on the suit property and destroying the developments made thereon.
88. The Respondent admits that the Applicant is in possession of the said portion but argues that the Applicant's claim arises out of land sale agreements and is not founded on adverse possession.
89. The Applicant in his supporting affidavit to the application has attached copies of various land sale agreements, maps and photographs that show trees that have been cut down.
90. I find that the Applicant has sufficiently demonstrated that he has a prima facie case with a probability of success.
91. Secondly, the applicant has to demonstrate that he will suffer irreparable injury that would not be adequately compensated by way of damages. The decision of Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR explains what is meant by irreparable injury as follows;
- “Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”
92. The Applicant argues that he has been in occupation of the said portion of land for a period of over twenty years. He also argues that he has made considerable developments on the land and is apprehensive that if the injunction is not granted, the suit property is in danger of being wasted thereby occasioning him irreparable damage.
93. Thirdly, the Applicant must demonstrate that the balance of convenience tilts in his favour. In Pius Kipchirchir Kogo vs Frank Kimeli Tenai (supra) the Court held as follows;
- “The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour 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 will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has 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”



94. In the present case, my view is that the balance of convenience tilts in favour of granting the injunctive relief to the Applicant.

B. Whether an order of inhibition should issue pending the hearing and determination of the suit.

95. The Applicant is seeking that this Court issues an order of inhibition restraining any dealings over land parcel No. Kericho/Roret/1508 pending the hearing and determination of the present suit.

96. The Respondent did not respond or address this issue in his submissions.

97. Section 68(1) of the *Land Registration Act* provides as follows;

“ 68.

(1) The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”

98. The Court in *Dorcas Muthoni & 2 Others Vs Michael Ireri Ngari* [2016] eKLR as was cited in *Daniel Gitau Kuria v Muthoni Mbugua Ndumo & 3 others* [2021] eKLR held as follows;

“An order of inhibition issued under Section 68 of the *Land Registration Act* is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed off. The Court issuing such an order must be satisfied that the Applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial”.

99. As has been stated in the case of *Dorcas Muthoni* (Supra), an order of inhibition is intended to preserve the suit property pending the hearing and determination of the suit.

C. Who should bear costs of this application?

100. On the question of costs of the application, the general rule is that cost shall follow the event in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court for good reason, directs otherwise.

Disposition.

101. In the upshot, I find that the Notice of Motion application dated 6th December, 2023 is merited and I hereby grant orders as follows:

- a. An order of temporary injunction is hereby issued restraining the Defendants whether by themselves, their agents and/or servants, from selling, sub-dividing, charging, transferring, encroaching on and/or interfering with the Plaintiff's quiet possession of 1.55 acres of land comprised in LR No. Kericho/Roret/1508 pending the hearing and determination of this suit.
- b. An order of inhibition is hereby issued restraining any dealings, registration and transactions whatsoever over that land parcel known as LR No. Kericho/Roret/1508 pending the hearing and determination of this suit.



c. The costs of this application shall abide the outcome of this suit.

102. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 3RD DAY OF OCTOBER, 2024.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Korir for the Applicants.

D.K. Yegon for the Respondents.

Court Assistant; Mr. Joseph Makori.

