



REPUBLIC OF KENYA



**Araka & another v Akuma (Environment & Land Case E001 of 2023)  
[2023] KEELC 20651 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20651 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE E001 OF 2023**

**M SILA, J**

**OCTOBER 11, 2023**

**BETWEEN**

**YUNUKE BOSIBORI ARAKA ..... 1<sup>ST</sup> PLAINTIFF**

**JAMES METOBO ARAKA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DANIEL OMBEO AKUMA ..... DEFENDANT**

*(Application for injunction; principles to be applied; applicants claiming certain land by way of adverse possession and seeking orders of injunction pending hearing and determination of the suit; applicants only attaching photographs to demonstrate possession; no report to provide a nexus between the said photographs and the disputed land and court of opinion that without the nexus the photographs could be of any place; court not persuaded that a prima facie case has been established; application for injunction dismissed)*

**RULING**

1. Through an Originating Summons filed on 15 August 2023, the applicants seek orders to the effect that they have obtained, by way of adverse possession, title to land respectively measuring approximately 0.183 Ha and 0.426 Ha, which is within the land registration number South Mugirango/Bosinange/100. From the annexed copy of the register, the title is in the name of one Teresa Ombeo. In the summons, it is said that Teresa Ombeo is deceased and the respondent has been sued as administrator of her estate. The applicants seek title to these portions that they claim and an order to have the respondent permanently restrained from the same. Together with the Originating Summons, the applicants filed an application seeking interlocutory orders of injunction, so as to have the respondent restrained from dealing or interfering with their possession, pending hearing and determination of this suit. It is that application which is the subject of this ruling.



2. So far, no appearance has been filed by the respondent and nothing has been filed in response to the said application.
3. This is an application for injunction and I stand guided by the principles laid down in the case of *Giella vs Cassman Brown* (1975) EA 358 where it was held that to succeed in an application for injunction, the applicant needs to demonstrate a *prima facie* case with a probability of success, demonstrate that he/she stands to suffer irreparable loss if the application is not allowed, and where the court is in doubt, the application will be determined on a balance of convenience.
4. These principles were elaborated in the case of *Nguruman vs Jack Bond Nielsen*, Court of Appeal at Nairobi, Civil Appeal No. 77 of 2012 (2024) eKLR, where the Court of Appeal stated as follows :

“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) allay 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 stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a *prima facie* case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration...”

5. The Court of Appeal further elaborated on the standard of proof of a *prima facie* case by stating as follows :-

“The standard of proof of that *prima facie* case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant’s case is more likely than not to ultimately succeed”.

6. The task that a court faced with an application for injunction needs to deal with, is whether, on the material provided, the applicant is likely to ultimately succeed. Inevitably, the court must make a preliminary assessment of the material presented in order to make this determination.
7. I have gone through the affidavits of the applicants which comprises of the material in support of their case. It is from these that I need to determine whether the applicants have demonstrated a *prima facie* case with a probability of success.
8. In the supporting affidavits, the applicants contend that they are in possession of the suit land. It is claimed that on 9 August 2023, the respondent hired goons who descended on the property with a view to scare them to vacate but they were stopped by ‘nyumba kumi.’ They have annexed photographs



of mature trees and houses which they say are within the disputed land and which they rely on to demonstrate their possession.

9. I cannot, merely by looking at photographs, vouch that whatever is in those photographs actually depicts the suit land. The person who took those photographs is also not disclosed. It is advisable for every applicant in a case such as this to get a surveyor, or a valuer, to make a report on the ground occupation and economic use of the suit land, since photographs can be of any land. Without a form of a report to establish a nexus between those photographs and the actual land in question, this court cannot come to the conclusion that the photographs are of the suit land.
10. I am thus not persuaded that the applicants have presented a *prima facie* case to enable me issue an order of injunction. Given that position, this application must be dismissed and it is hereby dismissed. I however make no orders as to costs since nothing was filed to oppose it.
11. Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 11 OCTOBER 2023**

**JUSTICE MUNYAO SILA**

**JUDGE,**

**ENVIRONMENT AND LAND COURT AT KISII**

