



REPUBLIC OF KENYA



KENYA LAW
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Mauti & another v Mauti & another (Environment & Land Case E008 of 2025) [2025] KEELC 3960 (KLR) (21 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3960 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E008 OF 2025**

DO OHUNGO, J

MAY 21, 2025

BETWEEN

EZEKIEL NYARANGO MAUTI 1ST PLAINTIFF

MONICA NYARONGO 2ND PLAINTIFF

AND

TERESIA KWAMBOKA MAUTI 1ST DEFENDANT

JACKSON NYAMOKO MAOBE 2ND DEFENDANT

RULING

1. Litigation in this matter commenced in the Subordinate Court on 17th March 2025 when the Plaintiffs filed Plaintiff of even date. The matter was later transferred to this Court. The Plaintiffs averred in the Plaintiff that the First Plaintiff was the registered proprietor of the parcels of land known as Nyankono Settlement Scheme /175 and 177 (the suit properties) and that the First Defendant is his daughter-in-law. That the First Defendant forcefully took possession of the suit properties and sold a portion of Nyankono Settlement Scheme /175 to the Second Defendant. They further averred that the Defendants acted fraudulently and destroyed tea bushes and trees thereby occasioning loss of Kshs 1,752,000.
2. The Plaintiffs therefore prayed for judgment against the Defendants for:
 - a. A declaration that the 1st plaintiff is the rightful owner of the parcels of land known as Nyankono Settlement Scheme/175 and 177.
 - b. An order for permanent injunction do issue restraining the defendants Whether acting by themselves, their agents, servant's employees or any person claiming through them from re-entering into in dealing with construction upon occupying or in any manner whatsoever as Nyankono Settlement Scheme/175 and Nyankono Settlement Scheme/177.



- c. The defendants to pay a sum of Kshs 1,752,000/= being the amount of destroyed tea bushes as per the Agriculture officers report.
 - d. An order compelling the defendants to demolish and pull down all or any structures standing on plot no Nyankono Settlement Scheme/175 and 177 and in default the plaintiff to be at liberty to demolish the same at the defendant's expense and under the supervision of the OCS Ekerenyo police station for purposes of maintaining peace and order.
 - e. An order of eviction against the defendant his servant and or agents and his servants from all that parcel of land compromised in Nyankono/Settlement Scheme/175 and 177.
 - f. Damages and or mesne profits from the date of trespass until the 2nd defendant delivers up possession of the said LR Nyankono Settlement Scheme 175 and 177.
 - g. The defendants to fully and severally pay the costs of the suit and interest.
 - h. Any other or further relief as this Honourable court may deem fit and just.
3. Together with the Plaint, the Plaintiffs filed Notice of Motion dated 17th March 2025, which is the subject of this ruling. The following orders are sought in the application:
- a. [Spent]
 - b. [Spent]
 - c. That court be pleased to issue an a (sic) permanent injunction restraining the defendant either by themselves, agent, servant and/or personal representative from disposing of, trespassing on, constructing on, alienating or otherwise dealing in any way or interfering with the plaintiff's possession and ownership of land known as Nyankono Settlement Scheme 175 and Nyankono Settlement Scheme/177 pending hearing and determination of this suit.
 - d. Costs of this application be provided for.
4. The application is supported by two affidavits sworn by the Plaintiffs. The contents of the affidavits are generally the same. The Plaintiffs deposed that the Second Plaintiff is the daughter of the First Plaintiff while the First Defendant is the daughter-in-law of the First Plaintiff. That the First Plaintiff is the registered proprietor of the suit properties and that the First Defendant has without the consent of the First Plaintiff sold a portion of the suit properties measuring ½ acre to the Second Defendant. They added that the Second Defendant had forcefully taken possession of the portion and started construction. The Second Plaintiff also deposed that the Second Defendant had dug a pit latrine on the suit properties. The Plaintiffs annexed copies of the title deeds, an agreement, judgment in Nyamira ELC No 66 of 2021, photographs and a report by the Ward Agricultural Extension Officer.
5. Although evidence of service of the application upon the Defendants was availed, the Defendants neither attended Court on the date scheduled for oral inter parte hearing nor filed any response as of that date. Accordingly, Counsel for the Plaintiffs argued that the application was unopposed. He relied entirely on the material on record and urged the Court to allow the application in terms of prayer (c) thereof.
6. In the course of considering the application, the registry brought it to my attention that the Defendants filed a Statement of Defence on 24th April 2025 and a Replying Affidavit on 12th May 2025, long after the inter parte hearing date. I have agonised over whether to consider those documents, in view of the late filing. Ultimately, I have found it necessary to consider them, in the interest of justice.



7. The Replying Affidavit is sworn by the First Defendant. She admitted therein the First Plaintiff is the registered proprietor of the suit properties and added that the First Plaintiff allocated a portion to her. That she sold the portion to the Second Defendant on 17th December 2023 at a consideration of Kshs 1,250,000. She denied the Plaintiffs' allegations of trespass and urged the Court to dismiss the application.
8. I have considered the application, the affidavits and the submissions. The sole issue for determination is whether the Plaintiffs should be granted the orders sought.
9. As drawn, the application is a bit confused as to whether it is seeking a permanent injunction or interlocutory injunction since it opens with the phrase "permanent injunction" and ends with the phrase "pending hearing and determination of this suit." Needless to restate, a permanent injunction is different from an interlocutory injunction.
10. The principles applicable while considering an application for an injunction are that the applicant must establish a *prima facie* case with a probability of success and that an injunction will not issue if damages can be an adequate compensation. Finally, if the Court is in doubt as to whether damages will be an adequate compensation then the Court will determine the matter on a balance of convenience. See *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and [*Nguruman Limited v Jan Bonde Nielsen & 2 others* \[2014\] eKLR](#).
11. The Court of Appeal held in [*Nguruman Limited v Jan Bonde Nielsen & 2 others*](#) (supra) as follows:

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 Afraba 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. The existence of a *prima facie* case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between.
12. I note that the Plaintiffs have prayed for a permanent injunction in the Plaint. If I were to grant a permanent injunction at this point, I would in essence have determined that aspect of the suit at this interlocutory point. I see no valid reason to grant a permanent injunction at this stage of the proceedings.
13. Regarding the aspect of an interlocutory injunction, I note that the Defendants have admitted that the First Plaintiff is the registered proprietor of the suit properties. The First Defendant has admitted that she sold a portion of the suit properties to the Second Defendant. Despite her claims that the Plaintiff allocated a portion of the suit properties to her, the First Defendant has not demonstrated legal proprietorship of the alleged portion. In those circumstances, questions arise as to her capacity to lawfully sell the portion to the Second Defendant. I have also taken note of the photographs which show the activities complained of by the Plaintiffs as well as First Defendant's statement on oath that the Second Defendant fenced the land and commenced cultivation thereon. I am satisfied that the Plaintiffs have established a *prima facie* case and that damages will not be an adequate remedy.



14. I find merit in the prayer for an interlocutory injunction, and I therefore make the following orders:

- a. An interlocutory injunction is hereby granted restraining the Defendants either by themselves, their agent, servant and/or personal representative from disposing of, trespassing on, constructing on, alienating or otherwise dealing in any way or interfering with the First Plaintiff's possession and ownership of land known as Nyankono Settlement Scheme/175 and Nyankono Settlement Scheme/177 pending hearing and determination of this suit.
- b. Costs shall be in the cause.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 21ST DAY OF MAY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Nyachiro for the Plaintiffs

Ms Omwoyo for the Defendants

Court Assistant: B Kerubo

