



Inima & another v Kitoro (Being Sued on His Own Capacity and as the Administrator of the Estate of Joshua Musaki Kegondi) (Environment & Land Case 005 of 2025) [2025] KEELC 3822 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3822 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VIHIGA

ENVIRONMENT & LAND CASE 005 OF 2025

E ASATI, J

MAY 15, 2025

IN THE MATTER OF AN APPLICATION FOR ORDERS UNDER SECTIONS

7, 8, 37 AND 38 OF THE LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS BASE DON ADVERSE POSSESSION

**IN THE MATTER OF: WHOLE LAND PARCEL
NO. TIRIKI/GISAMBAI/961 MEASURING 0.45 HA**

BETWEEN

RUTH INIMA 1ST APPLICANT

PATRICK CHUNZA 2ND APPLICANT

AND

**FRANCIS NGEDI KITORO (BEING SUED ON HIS OWN CAPACITY
AND AS THE ADMINISTRATOR OF THE ESTATE OF JOSHUA MUSAKI
KEGONDI) RESPONDENT**

RULING

1. The applicant herein filed an originating Summons dated 26th February 2025 seeking to be declared owner of Land Parcel known as Tiriki/gisambai/961 by adverse possession. By prayer 2 of the Originating Summons, the applicant sought for a prohibitory order of injunction restraining the defendants whether by themselves, their agents, servants or by any other persons whomsoever from evicting, trespassing upon, developing, building upon, damaging, wasting, utilizing or in any manner whatsoever from interfering with plaintiff's possession and occupation of the suit property namely Tiriki/gisambai/961.



2. Vide the certificate of urgency dated 26th February 2025 the applicant prayed that the matter be certified urgent for purposes of hearing the prayer for prohibitory injunction order only.
3. In reply to the application the Respondent filed a Replying Affidavit sworn on 29th April, 2025 by Francis Ngedi Kitiro.
4. The application's case is that they have been in continuous open, peaceful and uninterrupted utilization of parcel of land known as Tiriki/gisambai/961 since the year 1975. That they have extensively developed the land by erecting permanent structures, planting trees and constructing a water tank for the community's use and farms on the land. That the Respondent has never been in occupation of the suit parcel since 1975. That they now fear that they might lose occupation and ownership of the whole parcel given the intended sub-division, mutation and disposal of parcel No. Tiriki/gisambai/961 vide Grant in Succession Cause No. 202 of 2018 at Hamisi where the Grant is likely to be confirmed any time. That if the injunction is not granted prohibiting eviction or transfer of the property pending hearing and determination of the matter herein then the 2nd applicant will suffer irreparable damage and lose his homestead.
5. It was submitted on behalf of the applicants that the applicants who have lived on the suit land for over 35 years have a prima facie case with a probability of success.
6. That application was opposed vide the contents of the Replying Affidavit. The Respondent's case is that the applicants have come to court with unclean hands as they filed a Succession cause in Hamisi court purporting that they were the beneficiaries of the deceased registered owner of the suit land.
7. That the applicants have not been staying or occupying the suit land since the Respondent's family has been litigating with the view to recover the land. That the developments done by the applicants on the suit land were done without any authority from the administrators of the estate of the late Joshua Musaki Kegondi.
8. That the applicants have been on the suit land while they are aware that the land belongs to the beneficiaries of the estate of the late Joshua Musaki Kegondi. That the continued stay of the applicants on the suit land will interfere with the process of administration of the estate of the late Joshua Musaki Kegondi.
9. It was submitted on behalf of the Respondent than the application was brought under the wrong provisions of law. That the applicants have not demonstrated the danger which is imminent so as to necessitate grant of the orders sought. That the applicants have no right to claim the land as they have been on the land with the permission of the owner.
10. The substantive prayer sought is an order of prohibitory temporary injunction. A prohibitory injunction is an order that restrains a party from doing a specific act. The acts that the applicants seek the Respondent to be restrained from are shown in the application.
11. The grounds for grant of interlocutory injunction were set out in the case of *Giella vs Cassman Brown Co. Ltd* (1973) 358 that the Applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience.
12. It is not denied that the applicants are in occupation of the suit land and that they have developed their land. The Respondent claims that the occupation was with consent of the owner and that the developments were done without authority of the administrator of the estate of the deceased owner.



13. The substantive issues as to whether the applicant have been on the land with permission of the owner or adversely and whether they have acquired title will be deliberately in the hearing of the Originating Summons.
14. Although counsel for the Respondent raised the issue that the application had been brought under the wrong provision of the law and that the applicants have not demonstrated any imminent danger necessitating grant of the order sought, the court notes that the Respondent has not denied that he intends to administer the estate of the deceased. The respondent stated that the continued presence of the applicants on the suit land will hinder administration of the estate.
15. On the basis of the material placed before court, the court finds that the conditions for grant of the orders sought have been demonstrated. The applicants, and more particularly the 2nd applicant who is said to have a home on suit land if removed there from before the case is heard will no doubt suffer irreparable injury.
16. I find that prayer 2 of the Originating Summons dated 26th February 2025 has merit and hereby allow it pending hearing and determination of the Originating Summons. Costs in the Originating Summons. Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 15TH DAY OF MAY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi - Court Assistant.

Rabote for the Applicants.

Orute h/b for Manyoni for the Respondent.

