



Khayundi & 2 others (Suing as Legal Representative to the Estate of Daniel Olembu Khayundi) v Asembo & 6 others; Khayundi (Interested Party) (Environment & Land Case 010 of 2024) [2025] KEELC 3838 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3838 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND CASE 010 OF 2024**

E ASATI, J

MAY 15, 2025

BETWEEN

**LUKE AMBOYE KHAYUNDI 1ST PLAINTIFF
NABOTH ONIANG'O 2ND PLAINTIFF
WILLIAM PLEMBO KHAYUNDI 3RD PLAINTIFF
SUING AS LEGAL REPRESENTATIVE TO THE ESTATE OF DANIEL OLEMBO
KHAYUNDI**

AND

**JOEL ASEMBO 1ST DEFENDANT
TITO ALI 2ND DEFENDANT
WASHINGTON ANJICHI OKANGA 3RD DEFENDANT
TOKAA NAMAN CLIFTON 4TH DEFENDANT
EBWIRANYI STAGE PIKIPIKI SELF HELP GROUP 5TH DEFENDANT
THE LAND REGISTRAR, VIHIGA 6TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 7TH DEFENDANT**

AND

MARGARET AYIRO KHAYUNDI INTERESTED PARTY



RULING

1. This Ruling is in respect of the Chamber summons application dated 13th January 2025 brought by the plaintiffs pursuant to the provisions of sections 1, 1A, 1B, & 3A of the Civil Procedure Act and Order 40 of the Civil Procedure Rules.

Prayers 1 and 2 of the application are spent.

2. Prayer 3 seeks for an order of temporary injunction restraining the defendants/Respondents either by themselves or through their servants and/or agents from interfering with the applicant's and the Interested Party's quiet occupation of land parcel No. WEST BUNYORE/EBUTANYI/577 and/or the resultant sub-divisions known as WEST BUNYORE/EBUTANYI/1707, 1708, 1710 and 1711 or in any other way dealing with the said parcels of land by stationing goons thereon, fencing, ploughing, planting thereon, trespassing onto, harassing, maiming the applicants and the Interested Party or threatening them, depositing construction materials thereon howsoever, whatsoever, pending hearing and determination of the suit.

Prayer 4 seeks for an order that costs be provided for.

3. The application was supported by the averments in the Supporting Affidavit sworn on 13th January 2025 by Naboth Oniang'o and the annexures thereto.
4. The application was opposed vide the contents of the Replying Affidavit sworn by Joel Asembo the 1st Respondent on 17th March 2025.
5. The Respondents' case is that the application is premised on defective pleadings to which the party is bound. That the Respondents are not owners of the land parcel numbers WEST BUNYORE/EBUTANYI/1707- 1711. That the applicants lack capacity to institute the instant application. That injunction orders cannot issue to bar them from using their own land.
6. The substantive prayer in the application is for a temporary injunction pending hearing and determination of the suit.
7. 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. A prima facie case was defined by the Court of Appeal in *Mrao Ltd vs First American Bank Kenya Ltd & 2 Others [2003] eKLR* as follows:

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

8. Under Order 40 Rule 1 Civil Procedure Rules pursuant to which the application is brought, the court is empowered to issue an interlocutory injunction where it is proved by evidence or otherwise inter alia that the property in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit.



9. The grounds of the present application are that sub-division of land parcel number WEST BUNYORE/EBUTANYI/ 577 to create parcel numbers WEST BUNYORE/EBUTANYI/1707,1708, 1710 AND 1711 was fraudulent in that no Letters of Administration had been obtained before sub-division. That the applicants and the Interested Party still have the original title deed for WEST BUNYORE/EBUTANYI/577. That the Respondents particularly the 3rd and 4th Respondents continue trespassing onto the parcels and attacking the applicants with crude weapons.
10. That the applicants are poor villagers whose poverty has encouraged the Respondents, security apparatus and even local administration to overlook, harass, intimate, abuse, arrest at will and keep them in cells, threaten with death.
11. The application was canvassed by way of written submissions which I have taken into account. The first ground that an applicant for an order of temporary injunction must satisfy is that he/she has a prima facie case with a probability of success. Although the applicants claim that subdivision of the suit land was done fraudulently for lack of Letters of Administration to the estate of the registered owner, no evidence has been placed before court that land parcel No. 577 is what was subdivided to produce the above -mentioned land parcels. Or that the subdivision if any was done fraudulently. Moreover, the suit lands as described in the plaint are different from the suit lands in the application.
12. I find that no prima facie has been established. Similarly, irreparable injury has not been demonstrated. The balance of convenience, in the circumstance, tilts in favour of maintaining the obtaining status quo pending hearing of the suit.

The application is therefore dismissed. Costs in the main suit.

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.

N/A for the Plaintiff.

Kundu h/b for Chitwah for the 1st to 4th Respondents.

N/A for the 5th, 6th and 7th Defendants.

N/A for the Interested Party.

