



REPUBLIC OF KENYA



**KENYA LAW**  
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**Koya & 2 others v Torotoich (Enviromental and Land Originating Summons  
E013 of 2024) [2025] KEELC 3921 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3921 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2024  
MN MWANYALE, J  
MAY 15, 2025**

**BETWEEN**

**TOMPO OLE KOYA ..... 1<sup>ST</sup> PLAINTIFF**

**RAYMON LETEIPA ..... 2<sup>ND</sup> PLAINTIFF**

**PETERSON LEKAKENY ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**DORCAS JERUTO TOROTOICH ..... DEFENDANT**

**RULING**

1. The application dated 3<sup>rd</sup> October 2024, subject of this Ruling seeks orders that: -
  - i. Spent
  - ii. Spent
  - iii. Spent
  - iv. That the Honourable court be pleased to grant an order of temporary injunction, restraining the defendant/Respondent by themselves or agents or servants and/or anyone claiming under the said defendant respondents from entering upon, trespassing onto taking possession, cultivating and/or in any manner whatsoever dealing with suit land parcel No. Transmara/Kimintet/C15 pending hearing and determination of the originating summons.
  - v. That the Honourable court be pleased to grant conservatory order to protect, preserve and/or conserve the suit land parcel number Transmara/Kimintet/C15 from being alienated and/or encumbered and/or wasted whatsoever pending hearing and determination of the originating summons.
2. The grounds in support of the application are that: -



- a. The plaintiffs/Applicant has been in open and uninterrupted occupation of land parcel No. Transmara/Kimintet/C15 for measuring 56 Hactares for 15 years.
  - b. That the Plaintiffs/Applicants occupation of the suit land parcel number Transmara/Kimintet/C15 has been continuous, open and without any secret and/or interruption for a period of 15 years with the knowledge of the Defendant.
  - c. The Plaintiffs/Applicants have acquired title to the said land parcel NO. Transmara/Kimintet/C15 by adverse possession, and are claiming interests, having planted trees and formed thereon, hence they have a prima facie case with probability of success and are likely to suffer irreparable loss and damage hence interests of justice would be served if the orders sought; are granted.
3. The application is further supported by the supporting affidavit of the 1<sup>st</sup> Plaintiff/Applicant Tompo Ole Koya who deposed having entered in the suit parcel in 2009 and uses the entire 56 Ha, to the exclusion of the Respondent.
  4. He annexed photographs of a homestead established in the suit land.
  5. The application is opposed by the affidavit of Kenneth Limo Torotich who deposed
    - i) being a beneficiary of the Estate of the late Gedion Toroitich Kibet and deposed of two previous suits being Kilgoris SPMCC No. 34/2019 between Parmet Ole Kiseet Vs. Gedion Toroitich and a Criminal Case Kilgoris CMCR 528/2019 between Republic Vs. Parmet Ole Kiseet.
    - ii) That the Plaintiffs/Applicants entry on the suit property was as a result of an illegal lease between the Plaintiff/Applicant and Parmet Ole Kiseet in 2018, when Parmet Ole Kiseet filed the suits.
    - iii) That the civil suit had been finalized in favour of Gedeon Toroitich.
    - iv) That the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiff/Applicants are sons of Mr. Parmet Ole Kiseet while the 1<sup>st</sup> Applicant had leased from Mr. Ole Kiseet.
    - v) Thus, no prima facie evidence had been established to warrant grant of the injunction orders.
    - vi) He annexed a copy of the Judgment in Kilgoris CM Civil suit No. 34/2019, together with the pleadings thereto, an affidavits by Parmet Ole Kiseet charge sheet interalia; forensic investigations report.

The Application was canvassed by way of written submissions, which the court summarises as herefollows: -

6. The Applicant submits that he has made out a prima facie case with probability of success, as required in the Giella Vs. Casman Brown since the Respondents have conceded that the Applicants are in occupation.
7. On their part the Respondent submitted on two issues for determination: -
  - i. Whether the Plaintiff/Applicants have met the conditions requisite for the grant of the orders sought?
  - ii. Whether the Plaintiffs/Applicants are entitled to be granted on the prayers sought?



8. On the first issue, the Respondent placing reliance on the decision in the case of Nguruman Limited Vs. Jan Bonde Nielsen and 2 Others, submit that the Applicant has not established any proprietary rights and/or interests capable of being protected by way of the injunction sought, as the Plaintiff/Applicant is not an adverse possession, since the occupation of the Plaintiff on the suit property was pursuant to a lease agreement between the Plaintiff and one Parmet Ole Kiseet who presented himself as the owner of the suit land.
9. That the Applicants occupation on the suit property started in 2019 and that it was immediately reported and hence the threshold for adverse possession had not been met.
10. The Respondent submits that the Applicant has not established a prima facie case with probability of success.
11. On balance of convenience the Respondents submit that prohibiting the Applicants from the suit property will be to infringe on their proprietary rights as enshrined in *the Constitution*.
12. The Respondent submit that no irreparable harm shall be suffered by the Applicant, as the court needs not to inquire on the other conditions and in support of this proposition the Respondent placed reliance on the decision in the case of Lucy Wangui Gachara Vs. Minundi Okemba Lore (2015) eKLR, which decision reiterates the principles as set out in Nguruman Limited.
13. On the second issue, as to whether the application is merited, the Respondent submit the Applicant is not deserving of the orders having failed to prove occupation for the requisite period so as to be entitled to adverse possession.
14. The Respondent urge the court to decline the application and the orders sought, and dismiss the same with costs.

#### **Issues for Determination**

15. From the application, the rival affidavits, and rival submissions the court frames two issues for determination: -
  - i. whether or not the application is merited.
  - ii. Who bears the costs of this application.

#### **Analysis and Determination**

16. Upon consideration of the application has the applicant established a prima facie? In *Mrao Limited Vs. First American Bank Limited* a prima facie case was defined as one “which on the material presented, a tribunal properly directing itself will conclude that there exists a right which is apparently been infringed by the opposite party so as to call for an explanation or rebuttal from the later.... A prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right and the probability of success of the Applicants case upon trial. That is clearly a standard which is higher than an arguable case...”
17. Granted the Applicants have raised issues of occupation on the suit property, but the Respondent have indicated that the occupation started in 2018 pursuant to a lease by one Parmet Ole Kiseet who purported to be the owner and have exhibited a judgment Respondent has in their favour. The Applicant has thus raised issues, which the Respondent has responded to and the court is of the view that the Applicant has not met the threshold of a prima facie case, as he has not established a right that is being infringed by the Respondent so as to call a rebuttal by the respondent.



18. Once a prima facie has not been established the court is not required to enquire into the two other conditions in the Giella Vs. Cassman Brown as was held in the decision in the case of Kenya Commercial Finance Company Ltd. Vs. Afraha Education Society (2001) I.E.A 86 where the court held in taralia, “if prima facie case is not established then irreparable injury and balance of convenience need no consideration”.
19. Thus, in answer to issue number 1 the court having found that there is no prima facie case, established it follows that the threshold for a grant of injunction has not been met and hence the application is not merited.
20. Accordingly, the application dated 03.10.2024 is not merited and the same is hereby dismissed with costs to the Respondents.

**DATED AT KILGORIS THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Emmanuel/Sylvia

Mr. Ogola for the respondent.

Mr. Mudey for the Applicant.

