



**Ngeno v Chepkwony (Sued in His Capacity as the Legal Representative of Taplule w/o Kenda - Deceased) & another (Environment & Land Case E001 of 2024) [2025] KEELC 57 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 57 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE E001 OF 2024  
LA OMOLLO, J  
JANUARY 23, 2025**

**BETWEEN**

**SIMON CHERUIYOT NGENO ..... APPLICANT**

**AND**

**SIMEON KIPKOECH CHEPKWONY (SUED IN HIS CAPACITY AS THE LEGAL REPRESENTATIVE OF TAPLULE W/O KENDA - DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**ESTHER CHEPKURUI SOI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. This ruling is in respect of the Applicant’s Notice of Motion application dated 17<sup>th</sup> April, 2024. The said application is expressed to be brought under Order 40 & Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3A of the *Civil Procedure Act*.
2. The Applicant seeks the following orders;
  - a. Spent.
  - b. Spent
  - c. That pending the hearing and determination of this suit, an injunction do issue restraining the Respondents whether by themselves, their agents and/or servants, from selling, sub-dividing, charging, transferring, encroaching on and/or interfering with the Plaintiff’s quiet possession of 1.5 acres of land comprised in LR No. Kericho/Getarwet/89.
  - d. Spent



- e. That pending the hearing and determination of this suit this Honourable Court be pleased to issue an order of inhibition restraining any dealings, registration and transactions whatsoever over that land parcel known as LR No. Kericho/Getarwet/89.
  - f. That the costs of this application be provided for.
  - g. That necessary directions be made.
3. The application is based on the grounds on its face and the supporting affidavit of Simon Cheruiyot Ngeno sworn on 16<sup>th</sup> April, 2024.

### **Factual Background.**

4. The Applicant commenced the present proceedings vide the Originating Summons dated 27<sup>th</sup> February, 2024 where he seeks the determination of the following questions;
- a. Whether the Applicant has been in open quiet, uninterrupted and exclusive possession of 1.5 (one decimal five) acres comprised in LR No. Kericho/Getarwet/89 for a period exceeding 12 years.
  - b. Whether the Applicant is entitled to the said 1.5 acres comprised in LR No. Kericho/Getarwet/89 by adverse possession.
  - c. Whether the Honourable Court should order the 2<sup>nd</sup> Respondent to execute mutation and transfer forms so as to effect a valid transfer of the said 1.5 acres comprised in LR No. Kericho/Getarwet/89 to the Applicant.
  - d. Whether this Honourable Court should issue a permanent order of injunction restraining the Respondents whether by themselves, their agents, nominees, servants and/or representatives from interfering with the Applicant's quiet possession of the said land.
5. As at the time of writing this ruling, the Respondents have not filed any responses to the Originating Summons.

### **The Applicant's contention.**

6. The Applicant contends that he was born in the year 1960 at Tulwamoi village where land parcel No. Kericho/Getarwet/89 is situated.
7. The Applicant also contends that land parcel No. Kericho/Getarwet/87 initially belonged to his father Cheliten Arap Chumo (Deceased) and it borders land parcel No. Kericho/Getarwet/89 currently registered in the name of Tapule W/O Kenda (Deceased).
8. The Applicant further contends that the 1<sup>st</sup> Respondent secured a Certificate of Confirmation of Grant in respect of the estate of Taplule W/O Kenda (deceased). He adds that he has instituted this suit against the 1<sup>st</sup> Respondent in his capacity as the administrator of the said estate and against the 2<sup>nd</sup> Respondent who is one of the beneficiaries.
9. It is his contention that his deceased father was in occupation of the said land before he settled him (Applicant) on it. He adds that there was a swamp that separated their land from land parcel No. Kericho/Getarwet/89.
10. It is also his contention that upon taking possession of the suit property, he planted tea on approximately one acre, on another area he planted trees and about the year 2017, he dug two fish ponds on half an acre.



11. It is further his contention that before he occupied the 1.5-acre portion of the suit property, there was a fence between land parcel No. Kericho/Getarwet/87 and 89.
12. He contends that in December 2006, land parcel No. Kericho/Getarwet/87 was transferred to his mother Chepkemoi Tabutany Chumo by transmission.
13. He also contends that in the year 2008, his mother sold a portion measuring 0.445 Ha (1 acre) to Soet Primary School.
14. He further contends that during the process of survey of their land for purposes of excising the portion that had been sold, parties to this suit learnt from the map that he was occupying a portion measuring 1.5 acres of land parcel No. Kericho/Getarwet/89. He adds that all along he and his deceased father were in illegal occupation of the said portion.
15. It is his contention that upon survey and subdivision, the portion of land that he was in occupation of was distinguished as belonging to the Respondents family and was not their family land as he had presumed.
16. It is also his contention that once it became apparent that he had encroached on land parcel No. Kericho/Getarwet/89, the 1<sup>st</sup> Respondent raised a ruckus and claimed that he had trespassed on their land.
17. It is further his contention that despite the Respondents raising a ruckus, they did not take any step to claim the land from him.
18. He contends that from the year 2008 to date, the Respondents have been opposing his occupation of the portion of the suit property and in the year 2020, a brother to the 1<sup>st</sup> Respondent and a son to the 2<sup>nd</sup> Respondent fell his trees and when he confronted him, he was assaulted.
19. He also contends that around March, 2023 the 1<sup>st</sup> Respondent who is a brother in law to his wife Josephine C. Ngeno called him and showed him the Certificate of Confirmation of Grant and demanded that he vacates the suit property as the suit land had devolved to the 2<sup>nd</sup> Respondent.
20. He further contends that in an effort to secure his rights to the suit property, he together with his wife filed Summons for Revocation of Grant without legal representation which were dismissed for want of prosecution.
21. It is his contention that he later sought legal counsel and was advised to file a claim of adverse possession.
22. It is also his contention that his family has been in occupation of the portion of the suit property from the year 1950 which portion he was given when he attained the age of majority in the year 1982.
23. It is further his contention that even though the Respondents have been claiming that he is in wrongful occupation of the suit property, he has nevertheless been in open, quiet and peaceful occupation of the land until the year 2020 when the Respondents family member fell his trees and assaulted him.
24. He contends that after the 1<sup>st</sup> Respondent secured a Certificate of Confirmation of grant, he filed an application in Court seeking for an order for determination of boundaries of the suit property.
25. He also contends that in the said application, the 1<sup>st</sup> Respondent is seeking for an order that the Surveyor visits and ascertains the boundaries of the suit property. He adds that the 1<sup>st</sup> Respondent is also seeking that the surveyor be given security.
26. He further contends that he is apprehensive that if the orders sought are not granted, the Respondents will use the orders they have sought in the succession matter to evict him from the suit property.



27. It is his contention that since completing succession proceedings, the Respondents have become emboldened in their efforts to evict him and his family from the suit property notwithstanding the fact that they have been in occupation for a period exceeding the requisite twelve years.
28. It is his contention that his occupation has been without the consent of the Respondents and/or their family and has been open, quiet, peaceful and uninterrupted.
29. He ends his deposition by seeking that orders be issued to preserve the suit property pending the hearing and determination of the suit.
30. The Respondents did not file any response to the application.

**Issues for determination.**

31. The Applicant filed his submissions on 9<sup>th</sup> September, 2024 while the Respondent did not file any submissions.
32. The Applicant submits on the following issues;
  - a. Whether the Applicant has satisfied the conditions for grant of interlocutory order(s) of injunction.
  - b. Whether the Applicant is deserving of the inhibition order sought.
33. With regard to the first issue, the Applicant relies on the judicial decision of *Giella vs Cassman Brown & Company Limited* [1973] EA 358 and submits that the Court can only grant the injunctive relief sought if he establishes a prima facie case, if he demonstrates that he stands to suffer irreparable loss and if the Court is in doubt, the court should take into consideration where the balance of convenience lies.
34. The Applicant while reiterating the averments in his supporting affidavit submits that he has demonstrated that he has a prima facie case as he has been in open, quiet and exclusive possession of a portion of land parcel No. Kericho/Getarwet/89 measuring 1.5 acres for a period of over 40 years.
35. The Applicant also submits that in the event the Respondents alienate the suit property, he will suffer irreparable harm which cannot be compensated by an award of damages as the suit property is his source of livelihood.
36. The Applicant relies on the judicial decision of *Paul Gitonga Wanjau vs Gathuthi Tea Factory Co. Ltd & 2 Others Nyeri HCC No. 28 of 2015* in support of his submissions.
37. The Applicant submits that the balance of convenience tilts in his favour as he is in occupation of the suit property and that he is apprehensive that the Respondents might deprive him the land unless restrained by this Honourable Court. The Applicant relies on the judicial decision of *Kipkoech Kangogo v Chebii Yego* [2013] eKLR in support of his submissions.
38. With regard to the second issue, the Applicant relies on Section 68 of the *Land Registration Act* and submits that before an order of inhibition is granted, a party must demonstrate that property is at risk of being disposed off to his detriment unless orders of inhibition are granted. The Applicant must also demonstrate that the refusal to grant orders of inhibition would render his suit nugatory and that he has an arguable case.
39. The Applicant reiterates that he has been in open, quiet and un interrupted occupation of the suit property while the Respondents have never been in occupation.



40. It is the Applicant's submissions that the Respondents will not suffer any prejudice if the orders sought are granted.

**Analysis and Determination.**

41. I have considered the application and the Applicant's submissions and my view is that the following issues arise for determination:
- a. Whether the Applicant has met the threshold for grant of orders of temporary injunction pending hearing and determination of the Originating Summons herein.
  - b. Whether an order of inhibition should issue pending the hearing and determination of the suit.
  - c. Who should bear costs of the application.

**A. Whether the Applicant has met the threshold for grant of temporary injunction pending hearing and determination of the Originating Summons herein.**

42. In the judicial decision of *Giella vs. Cassman Brown* [1973] EA 358, the Court stated the conditions for grant of interlocutory injunctions as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the Court is in doubt it will decide an application on the balance of convenience.”

43. The Applicant has to first establish a prima facie case. A prima facie case was defined in *Mrao Limited vs. First American Bank of Kenya & 2 Others* [2003] eKLR as follows;

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

44. It is the Applicant's contention that he has been in occupation of a portion of land parcel No. Kericho/Getarwet/89 measuring 1.5 acres since the year 1982.
45. The Applicant also contends that he has lived on the said parcel of land peacefully until the year 2008 when the Respondents begun to claim the land.
46. The Applicant also contends that the only instance where his occupation was not peaceful was in the year 2020 when the 1<sup>st</sup> Respondent's brother entered the suit property, cut down trees and assaulted him.
47. The Applicant in his supporting affidavit to the application has attached a copy of the green card for land parcel No. Kericho/Getarwet/89 which shows that the land was registered in the name of Taplule w/o Kenda on 12<sup>th</sup> November, 1968 and was issued with a title deed on 12<sup>th</sup> May, 2017.
48. The Applicant has also attached black and white photographs of what appears to be trees and copies of an application filed in Kericho CMCC No. 142 of 2020 in the matter of the estate of Mary Chemetet



Kenda alias Taplule W/O Kenda (Deceased) Simeon Kipkoech Chepkwony vs Josephine C. Ngeno & Simion Cheruiyot Ngeno.

49. The said application is dated 22<sup>nd</sup> November, 2023 and filed on 27<sup>th</sup> November, 2023. It seeks for orders directing the County Land Surveyor to visit and ascertain the boundaries of land parcel No. Kericho/Getarwet/89.

50. It is my view that the Applicant has sufficiently demonstrated that he has a prima facie case with a probability of success.

51. Secondly, the Applicant has to demonstrate that he will suffer irreparable injury that would not be adequately compensated by way of damages. In the judicial decision of Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR the Court explains what is meant by irreparable injury as follows;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

52. The Applicant submits that he has been in occupation of a portion of the suit property for a period of over forty years. He also submits that he has made comprehensive developments thereon and is apprehensive that if the injunction is not granted, the Respondents may evict him and his family.

53. Thirdly, the Applicant must demonstrate that the balance of convenience tilts in his favour. In Pius Kipchirchir Kogo vs Frank Kimeli Tenai (supra) the Court held as follows;

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it”

54. In the circumstances of this case, it is my view that the Applicant is bound to suffer greater inconvenience than the Respondent and the balance of convenience therefore tilts in his favour.

#### **B. Whether an order of inhibition should issue pending the hearing and determination of the suit.**

55. The Applicant is seeking that the Court issues an order of inhibition restraining any dealings over land parcel No. Kericho/Getarwet/89 pending the hearing and determination of this suit.

56. Section 68(1) of the *Land Registration Act* provides as follows;“

“68. (1)The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”



57. In the judicial decision of Dorcas Muthoni & 2 Others Vs Michael Ileri Ngari [2016] eKLR as was cited in Daniel Gitau Kuria v Muthoni Mbugua Ndumo & 3 others [2021] eKLR the Court held as follows;

“An order of inhibition issued under Section 68 of the *Land Registration Act* is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed off. The Court issuing such an order must be satisfied that the Applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial”

58. As held in the above cited judicial decision, an order of inhibition is intended to preserve the suit property pending the hearing and determination of a suit.

**Disposition.**

59. Taking the foregoing into consideration, the application dated April 17, 2024 is hereby allowed in the following terms:

- a. An order of temporary injunction is hereby issued restraining the Respondents whether by themselves, their agents and/or servants, from selling, sub-dividing, charging, transferring, encroaching on and/or interfering with the Plaintiff's quiet possession of 1.5 acres of land comprised in LR No. Kericho/Getarwet/89 pending the hearing and determination of this suit.
- b. An order of inhibition is hereby issued restraining any dealings, registration and transactions whatsoever over that land parcel known as LR No. Kericho/Getarwet/89.
- c. The costs of this application shall abide the outcome of the suit.

60. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 23<sup>rd</sup> DAY OF JANUARY, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Kipkorir for the Applicant.

Respondents - Absent

Court Assistant; Mr. Joseph Makori.

