



REPUBLIC OF KENYA



**Kinyua v Ranguma & 3 others (Environment and Land Case  
E512 of 2024) [2025] KEELC 4883 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4883 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E512 OF 2024**

**JG KEMEI, J  
JUNE 30, 2025**

**BETWEEN**

**WILFRED MURITHI KINYUA ..... PLAINTIFF**

**AND**

**JACKTON NYANUNGO RANGUMA ..... 1<sup>ST</sup> DEFENDANT**

**BRIAN WEKE ..... 2<sup>ND</sup> DEFENDANT**

**EUGEFREIGHT TRAVEL & TOURS LTD ..... 3<sup>RD</sup> DEFENDANT**

**GEORGE TITI KADU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before the Court is the Applicants application dated the 9/12/24 seeking, in the main, orders restraining the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> Defendants by themselves, agents or otherwise howsoever from alienating or encumbering property known as Land Reference No 1008/16, Miotoni /Warai Road, Karen (suit land) from entering upon and remaining on the property and that the said 1<sup>st</sup> -3<sup>rd</sup> Defendants be directed to vacate the property and hand over vacant possession to the Plaintiff. The second prayer is for costs of the application to be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Wilfred Murithi Kinyua, the Applicant herein sworn on even date.
3. The Applicant deponed that he is the Executor of the will of the late Christiana Merina Vendana alias Emilia Alfano Vendana dated the 5/1/2004 and that he inherited the suit land pursuant to the confirmation of grant issued on 16/5/2022 in Succ Cause HCCC No 941 of 2021 and that he is in the process of procuring a title for the suit land. That he was in possession of the suit land until 3/12/24.
4. He stated that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the company of armed men invaded the property and dispossessed his caretakers and trespassed onto the land, forcing him to report the invasion to Karen



- police Station. He is emphatic that the 1<sup>st</sup> -3<sup>rd</sup> Respondents have no valid and lawful claim to the suit land. That unless restrained by an order of this court, he risks loss and irreparable harm including losing the suit land to the trespassers. He urged the court to grant a mandatory injunction to restore him to the suit land.
5. Opposing the application, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents filed a Replying Affidavit sworn by Jackton Nyanungo Ranguma, the 1<sup>st</sup> Respondent on 17/1/25.
  6. The deponent avowed that he and his wife Olivia Achola Ranguma are directors and shareholders of the 3<sup>rd</sup> Respondent whose full names are Eugefreight Travel & Tours Limited and not Eugefreight Tours & Safaris Limited as erroneously stated in the sale agreement dated the 26/7/2004. See the certificate of change of name dated the 13/8/99 and marked as JR-01.
  7. That he purchased the suit land from Maria Basilia Nunes and Brian Charles Cyril D'Souza through the 3<sup>rd</sup> Respondent Company wide sale agreement dated the 26/7/2004 at a consideration of Kshs 28 Million after which he was furnished with original completion/title documents annexed and marked JR-3-5 being the indenture of conveyance in favour of the 3<sup>rd</sup> Respondent dated the 12/3/2019, original conveyance and the original vesting assent. That despite holding the original completion documents he has not effected the transfer of the conveyance due to financial reasons. That he took possession of the property on or about the year 2004.
  8. The deponent informed the court that the suit land has been subject to several suit in various courts being; BPRT E1036 of 2024; Mis Application No E427 of 2002 (OS); ELC E082 of 2021 -*Eugefreight Travel & Tours Limited v Franklin Subbas alias Franklin & John Kipkosgei Korir* and COA E216 of 2024- *Franklin Subbas alias Franklin & John Kipkosgei Korir v Eugefreight Travel & Tours Limited*.
  9. Whilst giving the background of the suit, the deponent refuted the claim of the Applicant and denied that the suit land was ever owned by Christiana Merina Vendana alias Emilia Alfano Vendana. That the land traces its root of title to the estate of Maria Veronica Seniorina Preciosa Francesco D' Souza and Maria Basilia Nunes. That the interest/title in the suit land was conveyed to his company by Brian Charles Cyril D'Souza, the duly appointed attorney of the estate of the original owner and Maria Basilia Nunes as per the conveyance dated the 12/3/2019. He termed the applicant's claim as a fraudulent stake to disrupt the 3<sup>rd</sup> respondent's quiet possession of the land.
  10. Further, the deponent stated that the 3<sup>rd</sup> Respondent leased the suit land to the 4<sup>th</sup> Respondent on 13/10/2022 who remains in possession with the exception of December 2024 when his possession was interrupted by the Applicant. He urged the court to dismiss the application with costs.
  11. The 2<sup>nd</sup> Respondent did not file any response to the application.
  12. The 4<sup>th</sup> Respondent filed a Preliminary objection urging the court to strike out the application on costs. The objection is based on the grounds as follows;
    - a. That in respect of the same subject matter, there is a pending matter involving the property known as Plot No. LR 1008/16 Karen (the property), being BPRT case E1036 of 2014, between the plaintiff, the 3<sup>rd</sup> party and the applicant.
    - b. That the plaintiff seeks vesting orders but...." this court has neither the legal basis nor the jurisdiction to grant vesting order sought ...." M.D. Mwangi, Judge in re Wilfred Murithi Kinyua (Applicant) (Environment & Land Miscellaneous Case E135 of 2023).
    - c. That the plaintiff is not entitled to obtain an equitable remedy because the plaintiff having irregularly evicted the applicant from the property using court orders that he obtained



irregularly, has acted in bad faith with respect to the subject of his complaint = that is, with unclean hands.

- d. That in light of fact in page 37 of the plaintiff's Exhibit that that the property as on 11/10/2019 belonged to Franklin D'Souza & Maria Basilia Nunes who on 26/6/2004 agreed to sell the property, the plaintiff, a reasonable person, would believe, under those facts and circumstances, that the 5/01/2004 Last Will and Testament of Christiana Merina Vendana (pages 1-9 of the Plaintiff's Exhibit) is not reliable evidence for ownership case – that is, the plaintiff sadly has no reasonable cause to believe that he owns the property.
13. On 29/4/25, the 4th Respondent filed a Replying Affidavit in opposition and averred that the application is misconceived as it indirectly seeks constructive vesting orders instead of approaching the right forum which is the probate court.
14. That he has been in possession of the property for the last 3 years as a tenant save for the period between the 18/10/24 and 3/12/24 when the Applicant irregularly removed him from the suit land using illegally obtained orders, which orders were set aside by the court paving for his restoration in December 2024. That the Applicant has no claim to the suit land. Vide the Ruling issued on 26/9/23 in Misc Case No E135 of 2023 – Re Wilfred Murithi Kinyua the court declined to issue vesting orders in favour of the applicant. That allowing this application will amount relitigating his frivolous claim. He urged the court to dismiss the application with costs.

#### **The written submissions**

15. I have read and considered the submissions filed by the parties as per the directions of the court issued on the 7/4/25. The Applicant's submissions are dated the 2/5/25 while that of the 4<sup>th</sup> Respondent are dated the 20/5/25. The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents have not complied with the said directions. The court will therefore determine the application based on the material placed before it.

#### **Analysis and Determination**

16. Having considered the application, the responses and the rival submissions the key issues for determination are;
  - a. Whether the Preliminary objection dated 7/1/25 is merited.
  - b. Whether the Applicant is entitled to grant of restraining orders sought.
  - c. Who meets the cost of the application?

#### **The Preliminary Objection dated the 7/1/25.**

17. The basis of the 4<sup>th</sup> Respondents preliminary objection is that this application is but resjudicata, the same issues of ownership of the land having been heard and determined by this Court in Misc cause No E135 of 2023 – Re Wilfred Murithi Kinyua when the court declined to issue vesting orders. Secondly, BPRT No E1036 of 2014 is still pending between the applicant, the 3<sup>rd</sup> and 4<sup>th</sup> Respondent and therefore the application is subjudice.
18. None of the parties submitted on the objection in the submissions and as it is the objection is not opposed. That said, the objection being one that assaults the jurisdiction of this court, the court will determine it on its merits nevertheless.
19. To start with the court will look into what constitutes a preliminary objection. In the case of *Hassan Ali Jobo & Another v Suleiman Said Shabal & 2 Others* SCOK Petition No. 12013[2014] eKLR, the



Supreme Court restated the definition in the case *Mukbisa Biscuit Manufacturers Ltd v West End Distributors Ltd* (1969) EA where the Court of Appeal said that:

“...a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

20. The test to be applied in determining a proper preliminary objection can be deduced as follows; -
- i) A preliminary Objection must be a pure point of law which if argued may dispose of the entire suit.
  - ii) A Preliminary Objection should be based on the presumption that the pleadings and or facts as pleaded by the opposite side are correct or agreed facts.
  - iii) A Preliminary Objection cannot be entertained where;
    - a. The facts are disputed/contested.
    - b. The facts are liable to be contested.
    - c. The facts are to be proved through process of evidence.
    - d. What is sought is an exercise of judicial discretion.
21. In the case of *Henry Wanyama Khaemba v Standard Chartered Bank Ltd & Another* (2014) eKLR, the court stated as follows: -
- “The issues of res judicata, duplicity of suits and suit having been spent will require probing of evidence as it is already evident from the submissions by the 1<sup>st</sup> Defendant. They are incapable of being handled as Preliminary Objections because of the limited scope of jurisdiction on Preliminary Objections.”
22. Equally in the case of *George Kamau Kimani & 4 Others v County Government of Trans Nzoia & another* (2014) eKLR, the court stated: -
- “.....The best way to raise a ground of res judicata is by way of Notice of Motion where pleadings are annexed to enable the court to determine whether the current suit is *res judicata*.”
23. Picking the cue from the decision in the case of George Kamau (supra), I am not persuaded that the Preliminary Objection is competent to the extent that it has been raised as an objection rather than through a notice of motion application to accord the court the opportunity to evaluate the pleadings, the parties and the final determination of the court in the previous suits.
24. In the end the court finds that the Preliminary Objection is incompetent and is fit for striking out.



## Whether the Applicant is entitled to grant of restraining orders sought.

25. The purpose of a temporary injunction as stated in Order 40 Rule 1 of the [Civil Procedure Rules](#), 2010 is to stay and prevent the wasting, damaging, alienation, the sale, removal or disposition of the suit property. The Order provides that;
- “ 1. Where in any suit it is proved by affidavit or otherwise-
- a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or b) That the Respondents threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Respondents in the suit,
- The Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders”.
26. An applicant seeking orders of temporary injunction must prove the ingredients set out in the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 as follows: -
- a. First the Applicant must show a prima facie case with a probability of success.
- b. Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
- c. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.
27. It is trite that 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. See [Mrao Ltd v First American Bank of Kenya Ltd & 2 Others](#) (2003) eKLR
28. In this case, it is the applicant's case is that the suit land belonged to one, Vendana deceased. That vide a will which was later confirmed on 16/5/25 he inherited the suit land among other properties and that he is in the process of securing title in his name. That he was in possession of the property till 3/12/24 when the respondents invaded the property and removed him from possession without justifiable cause.
29. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents on the other hand have given a detailed background of the suit land and how it acquired it in 2019 through a conveyance. That said the 1<sup>st</sup> Respondent has not demonstrated that he or the 3<sup>rd</sup> Respondent hold a registered interest or title in the suit land. He conceded that he is yet to register the conveyance in the name of the 3<sup>rd</sup> Respondent due to financial reasons. He however informed the court that through the 3<sup>rd</sup> Respondent took possession of the land since 2004 to date.



30. The 4<sup>th</sup> Respondent's case is that he is a tenant of the 3<sup>rd</sup> Respondent since 2022 to date, save for the period between 18/10/24 and 3/12/24 when the Applicant raided the suit land and removed him ostensibly through irregular orders obtained from the BPRT.
31. As to whether the Applicant has demonstrated a prima facie case, the Applicant averred that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents the 3<sup>rd</sup> Respondents company is not registered and therefore incapable of holding title to the suit land. The 1<sup>st</sup> Respondent has explained that there was an error in the sale agreement and that the name of the 3<sup>rd</sup> Respondent is Eugefreight Travel & Tours Ltd as captured in the certificate of change of name dated 13/8/2019. The court finds that this is an issue that is best left to the trial court to determine as it goes to locus of the 3<sup>rd</sup> Respondent to hold title.
32. The Applicant produced a will dated 5/1/2004 which appointed the Applicant executor of the deceased estate and listing the various properties of the estate, the Kenya Gazette dated the 27/8/21 and the certificate of confirmation of grant issued on 16/5/21. The Applicant also annexed a number of documents giving the historical ownership of the suit land from 1965 including the sale agreement and the conveyance in favour of the 3<sup>rd</sup> Respondent. The court was not shown similar documents linking the suit land to Christiana Merina Vendana. Since the Court is not required to make final findings of contested facts at this stage, as the Court should only weigh the relative strength of the party's cases, I say no more. See *Mbuthia v Jimba credit Corporation Ltd* (1988) eKLR.
33. It was further contended by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents that they have been in possession of the suit land since 2004. That they leased the suit land to the 4<sup>th</sup> Respondent in 2022 who has been in possession todate except for a few days towards the end of last year when he was unlawfully removed. That the court dismissed the BPRT case of the Applicant paving way for the restoration of the 4<sup>th</sup> Respondent in the suit land on 3/12/24. Though the Applicant admits that he left possession of the suit land on 3/12/24, he has not explained when he took over possession. The circumstances of the parties claim in respect to possession and ownership is a contentious matter which will be determined by the court at the trial.
34. In the end, the Court is not persuaded that the Applicant has demonstrated a prima facie case.
35. On irreparable loss, the Applicant urged that if the orders are not granted he will suffer irreparable loss. On the other hand, the Respondents argue that having not demonstrated any iota of ownership of the land, the Applicant cannot have suffered any loss let alone one that is irreparable.
36. In the case of *Nguruman Ltd v Jan Bonde Nielsen & 2 others* [2014] eKLR, the Court stated;

“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which the amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
37. I have perused the plaint where the Applicant has sought orders for general damages for trespass on the property and in the view of the court I find that if the Applicant is to suffer any loss the same is compensable by damages. In the premises the court is not satisfied that this limb has not been proven.



38. Where does the balance of convenience lie? From the affidavit evidence, it is commonly acknowledged that the 4<sup>th</sup> Respondent is in possession of the suit land as a tenant of the 1<sup>st</sup> and 3<sup>rd</sup> Respondent. The Applicant's single prayer is the restraint of the Respondents from entering and remaining on the suit land and that they be directed to vacate the suit land and all together hand over vacant possession of the property to the applicant.
39. I have keenly perused the prayers in the plaint and I find that allowing the application will determine prayers Nos a-c without affording the parties the opportunity to present their claims before the court in a hearing. The import of such orders will be tantamount to evicting the Respondents from the land unheard which is an affront to the principles of natural justice which dictate that a party must not be condemned unheard. The right to be heard is a non-derogatory right enshrined in our Constitution.
40. It is trite that the court may grant an order for maintenance of status quo over the suit land until the suit is heard and determined on its own motion or on application. The purpose of status quo is meant to preserve the substratum of the subject matter of the dispute pending the conclusion of the hearing of the suit.
41. In this case and considering the affidavit evidence adduced by the parties and the circumstances of the case the court is of the considered view that the balance of convenience lies in issuing status quo as the interest of justice will be served when the substratum of the suit herein is preserved.
42. Final orders for disposal;
- a. The Preliminary objection date the 7/1/25 is incompetent. It is hereby struck out with costs.
  - b. The application dated the 9/12/24 is unmerited. It is dismissed with costs.
  - c. To preserve the substratum of the suit land pending the hearing and determination of the suit, status quo be and is hereby issued/maintained.
  - d. Status quo means; i) the 4<sup>th</sup> Respondent will remain in possession of the suit land pending the hearing and determination of the suit; ii) the Respondents are restrained from carrying out any developments or any other thing that can change the topography of the suit land pending the hearing and determination of the suit; iii) there shall be a restriction on the title prohibiting the registration of All dealings on the title including and not limited to alienation, disposing, selling charging and encumbering the suit land in any manner pending the hearing and determination of the suit.
43. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

1. NA for the Applicant
2. Ms Maina HB for Likunya for the 1<sup>st</sup> Respondent
3. NA for the 2<sup>nd</sup> Respondent
4. Ms Maina HB for Likunya for the 3<sup>rd</sup> Respondent



5. Interested party present in person

6. CA- Ms Yvette Njoroge

