



**Abdinedi v Odongo (Enviromental and Land Originating Summons  
E024 of 2025) [2025] KEELC 4785 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4785 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E024 OF 2025**

**E ASATI, J**

**JUNE 26, 2025**

**BETWEEN**

**MWAMINI SHABAN ABDINEDI ..... APPLICANT**

**AND**

**ROSEMARY AKINYI ODONGO ..... RESPONDENT**

**RULING**

1. The Notice of Motion dated 24<sup>th</sup> April, 2025 was brought by the Applicant pursuant to the provisions of Order 40 Rules 1 and 2 of the Civil Procedure Rules. The application seeks for an order of temporary injunction restraining the Respondent, his agents, family, servants and/or whomsoever jointly and severally from trespassing, transmitting, disposing of, or evicting the Applicant and his family from land parcel numbers Kisumu/Konya/3524 and 3525 pending hearing and determination of the suit. The application also seeks for an order that the costs of the application be provided for.
2. The grounds upon which the application was brought are that the suit lands are registered in the name of the Respondent. That immediately the Applicant bought the lands in the year 1993, she moved onto the suit lands and established her home thereon while cultivating the remainder of the land. That although the Respondent did not transfer ownership of the land to the Applicant, the Applicant has continued living peacefully on the lands until 16<sup>th</sup> March, 2024 when her husband died.
3. That the Respondent visited the Applicant with armed goons on 24<sup>th</sup> April, 2025 demanding the Applicant to vacate the property, that the Respondent intends to sell the property to a third party.
4. That the Applicant fears being evicted from the suit property where she has lived and developed for over 32 years hence currently seeking adverse possession. That the Applicant will suffer irreparable harm if the order sought is not granted.
5. The application was supported by the averment in her Supporting Affidavit sworn on 24<sup>th</sup> April, 2025.



6. The application was opposed vide the contents of Respondent's Replying Affidavit sworn on 9<sup>th</sup> May, 2025. The Respondent's case is that she has never disposed of the suit lands to the Applicant. That it was in the year 2018 when the Applicant's husband approached her to allow him to use the land as his land was adjacent. That the Plaintiff/Applicant's husband had constructed a house on land parcel No. Kisumu/Konya/3523 in the year 1995 which neighbours the two suit lands. That the Respondent is in possession of the two parcels of land with which she took loans in 1993 and 2011.
7. That she allowed the Applicant's husband to occupy the suit lands for purposes of rearing of chicken. The Respondent prayed that the application be dismissed with costs.
8. The application was argued orally on 19<sup>th</sup> May, 2025. It was submitted on behalf of the Applicant that the Applicant moved onto the suit property since 1993 where she has been residing with her husband, that she lives, cultivates and rears chicken on the suit land. That parcel No. Kisumu/Konya/3523 which the Respondent claim belongs to the Applicant is in the name of a third party. That the balance of convenience tilts in favour of the Applicant who has been on the land. That the Replying Affidavit does not deny that the Applicant is on the land. Counsel urged the court to maintain the status quo pending hearing of the Originating Summons.
9. On behalf of the Respondent, it was submitted that the Respondent reported the encroachment to the Chief at which point the Applicant gave an undertaking to demolish the structures by 17<sup>th</sup> April, 2025. That the Applicant is guilty of laches. That the Respondent gave permission to the Applicant to rear chicken on the lands in the year 2018.
10. On irreparable loss, Counsel submitted that there is no evidence that the Applicant is elderly. That the property can be valued and if the suit succeeds, the applicant can be compensated. That the Plaintiff owns parcel No. Kisumu/Konya/3532 where she constructed. That no prima facie case has been established and that the balance of convenience tilts in favour of the Respondent.

I have considered the application.

11. Grounds for grant of a temporary order of injunction as set out in Order 40 Rule 1 *Civil Procedure Act* are that the applicant must demonstrate that the suit property is in danger of being wasted, destroyed or alienated or wrongly sold. And as held in the case of *Giella vs Cassman Brown Co. Ltd (1973) 358* in order for an order of interlocutory injunction to issue, 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. In the present case, the Plaintiff/Applicant claims to be in possession of the suit lands since 1993 and that she has her home thereon and prays for status quo to be maintained by issuance of an order of temporary injunction pending hearing and determination of the suit.
13. The Respondent denies that the applicant has had adverse possession of the land and contends that the applicant only entered the suit lands in the year 2018 when she allowed the applicant's husband to enter the land and rear chicken thereon.
14. What emerges from the evidence and submissions placed before court is that the applicant is in occupation of the suit lands. Whether the applicant is in such occupation on account of permission given to her husband by the Respondent in the year 2018 for purposes of rearing chicken as contended by the Respondent or whether she is on the land as an adverse possessor who took possession in the year 1993 and established her home thereon and has developed the land for all those years as she contends, will be the subject of the main hearing of the suit.



15. The duty of the court at this stage is to preserve the status quo which has been demonstrated to the court pending hearing and determination of the suit.
16. For the foregoing reasons the court finds that the applicant has established a prima facie case with a probability of success. Further the balance of convenience tilts in favour of preserving the status quo pending hearing of the suit. The application is therefore allowed in the following terms;
  - i. an order of temporary injunction is hereby issued restraining the Respondent, her agents, family, servants and/or whomsoever jointly and severally from trespassing, transmitting, disposing of, or evicting the Applicant and her family from land parcel numbers Kisumu/Konya/3524 and 3525 pending hearing and determination of the suit.
  - ii. Costs to abide the main suit.  
Orders accordingly.

**RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 26<sup>TH</sup> DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Omondi for the Plaintiff/Applicant.

Obware for the Defendant/Respondent.

