



Chelimo & 3 others (Suing as the Administrator of the Estate of the Late Joseph Kibiator Chelimo - Deceased) v Ruto (Sued as Legal Representative of the Estate of Ruto Tingos - Deceased) (Environmental and Land Originating Summons E004 of 2025) [2025] KEELC 5375 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5375 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2025**

CK NZILI, J

JUNE 25, 2025

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF L.R NO. TRANS NZOIA/SUWERWA/140

BETWEEN

FLORA CHELIMO 1ST PLAINTIFF

FRED CHELIMO 2ND PLAINTIFF

SYLVESTER CHELIMO 3RD PLAINTIFF

AMBROSE CHELIMO 4TH PLAINTIFF

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE JOSEPH
KIBIATOR CHELIMO - DECEASED**

AND

SIMON CHERUIYOT RUTO DEFENDANT

**SUED AS LEGAL REPRESENTATIVE OF THE ESTATE OF RUTO TINGOS -
DECEASED**

RULING

1. Before the court is an application dated 12/2/2025. The applicants seek a temporary injunction barring and restraining the respondent from trespassing, entering, ploughing, damaging, wasting, alienating, transferrring, or in any way whatsoever interfering with their use, possession, ownership, or occupation



- of 4 acres of land parcel known as Trans Nzoia/Suwerwa/140, pending hearing and determination of this suit.
2. The grounds are set out on the face of the application and in a supporting affidavit sworn by Fred Chelimo, on even date. The applicants contend that they are the legal representatives of the estate of their late father Joseph Kibiator Chelimo, who was allotted the subject land in 1964, by the Settlement Fund Trustees, took vacant possession and was thereon uninterruptedly, until his demise on 24/4/2010.
 3. The applicants attached a copy of the register, a grant of letters of administration and a confirmation of the grant marked FC-1 and 2. The applicants depose that they proceeded to share out the suit property and subsequently settled on their respective portions. The applicant avers that in early 2025, the respondent, as the administrator of the estate of his late father Ruto Rotich Tingos, purported to enter the suit property, claiming it formed part of his late father's estate.
 4. The applicants depose that since 1994, the respondent's deceased father was the initial owner of land parcel Trans Nzoia/Suwerwa/140 and his father lived on their respective portions, but the respondent now claims that the 4 acres of the suit property were part of Trans Nzoia/Suwerwa/140, which has never been the case. The applicants aver that the respondent also threatened to plough the suit property, yet they have put up a permanent house and planted trees as per photos annexed as FC-3.
 5. The applicants aver that if the 4 acres of their land is taken away, their land of almost 18.2 acres, separate from the defendant's land measuring 38 acres, would be less; otherwise, the two deceased parents had no boundary dispute during their lifetime. The applicants depose that most of the land parcels in the area are on average 23 acres as per the attached area list and a charge document marked FC-4 and 5, rendering the respondent's claim misplaced.
 6. The application is opposed by a replying affidavit of Simon Cheruiyot Ruto, sworn on 5/3/2025, for being misconceived, devoid of merit, frivolous, vexatious, bad in law, defective and an outright abuse of the court process. The respondent denies the alleged trespass onto a portion measuring 4 acres, for he has all along been in possession, occupation and use of the portion as per the bundle of photos annexed as SCR-1. The respondent deposes that he applied for limited letters of administration ad litem for his father's estate, the then registered owner of LR No. Trans Nzoia/Suwerwa/140, as per the attached grant and title deed marked SCR-2A and 2B, and before he could do so, Timothy Kibet Yator filed Kitale ELC No. E003 of 2023 as per annexure SCR-3A and 3B, which he eventually withdrew as per notice of withdrawal marked SCR-4.
 7. The respondent deposes that the applicants herein are family members of the said Timothy Kibet, a son of the 1st applicant and a brother of the 2nd, 3rd, and 4th applicants. A copy of the affidavit of Timothy Kibet Yator is attached as annexure SCR-5. The respondent denies that the applicants have been in peaceful occupation of the suit land for the alleged 60 years, otherwise, the two families have had a long ranging dispute to an extent that the area chief had tried to amicably resolve the same but was unsuccessful. That thereafter, the dispute over the boundary was referred to the County Land Surveyor, who visited the suit property on 26/10/2022 and confirmed that there was encroachment on their parcel of land. The report and a sketch map are attached as annexure SCR-6(a) and (b).
 8. The respondent deposes that the applicants have not been sincere, for they have no claim, given that their late father's land was 10.9 Ha as per the surveyor's sketch map, which is the only available land that the applicants can inherit. The respondent deposes that his late father became the registered owner of the suit property in 2012, when he obtained the title and hence, time for adversity could not have started running from 1964, as alleged or at all. Further, the respondent deposes that the suit land initially was government land; hence, adverse possession was inapplicable.



9. The applicants rely on written submissions dated 17/3/2025. It is submitted that since the applicants have been occupying the land since 1964, they are entitled to orders of temporary injunction under Order 40 Rules 1, 2, and 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.
10. The applicants submit that they have met the ingredients of the injunction. Reliance is placed on *Giella -vs- Cassman Brown Co. Ltd* [1973] EA 358, *Mrao Ltd -vs- First American Bank (K) Ltd and Nguruman Ltd -vs- Jan Bonde Nielsen & Others* [2014] KECA 606[KLR].
11. The respondent relies on written submissions dated 28/3/2025. It is submitted that the applicants' allegation that the respondent has obtained a limited grant and has entered the land is not true, for that alone, does not demonstrate or prove any kind of danger that the suit property is in; and had only applied for the limited grant to recover part of L.R No. Trans Nzoia/Suwerwa/140, measuring 4 acres from one Timothy Kibet Yator, who was claiming the 4 acres. The respondent submits that the limited grant ad litem that he holds does not entitle him to alienate, damage, dispose of, or waste the suit property, until a full grant is granted.
12. The respondent submits that the application does not meet the test under Order 40 Rule 1(a) and (b) of the Civil Procedure Rules, or the ingredients set out in *Giella -vs- Cassman Brown & Co. Ltd* (supra), *Paul Gitonga -vs- Gathuthi Tea Factory Co. Ltd & Others* [2016] eKLR, and *American Cyanamid Co. -vs- Ethicon Ltd* [1975] ALLER 504.
13. The primary pleading is the originating summons dated 7/6/2025. The plaintiffs seek to be declared the owners of 4 acres to be excised out of Trans Nzoia/Suwerwa/140, by virtue of adverse possession. In the surveyor's report and sketch map dated 26/10/2022, the owner of parcel No. Trans Nzoia/Suwerwa/139, was found to have encroached on L.R No. Trans Nzoia/Suwerwa/140 by 1.95 Ha, through building two homes and planting blue gum trees. It is this portion that the applicants are claiming to have occupied for over 12 years. The respondent has also admitted that he sought for limited grant to recover the encroached portion by one Timothy Yator Kibet, a relative of the applicants.
14. A prima facie case is more than an arguable case. It is, where based on the material presented before the court, a tribunal would conclude that there exists a right which apparently has been infringed by the opposite party, to call for an explanation or rebuttal from the opposite party. See *Mrao Ltd -vs- First American Bank (K) Ltd*. (supra). In *Nguruman Ltd -vs- Jan Bonde Nielsen* [2014] eKLR, the court held that the three pillars are the foundation of any order of injunction, could have to be established or applied separately, distinctly and logically.
15. Irreparable injury refers to injury that may not be established monetarily. It must be real, apparent and imminent. Speculative fear or apprehension may not suffice. In *Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd* (supra), an applicant must demonstrate that he will suffer greater harm if the application for injunction is not granted and that damages may not be an adequate remedy. See *American Cyanamid Co. -vs- Ethicon Ltd* [1975] (supra).
16. Balance of convenience, on the other hand, is the inconvenience that the applicant will suffer, in the absence of an injunction as opposed to the respondent, if the application is not allowed and the suit ultimately succeeds being more, as held in *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* [2018] eKLR. As to how the court established whether the applicant has met the threshold, the court need not conduct a mini-trial. It need not make definite findings of law or fact.
17. In *Nguruman Ltd -vs- Jan Bonde Nielsen* (supra), the court cited *Mrao Ltd -vs- First American Bank (K) Ltd* (supra), that the applicant must not just raise issues, but must also present evidence of an alleged infringement of a right and the probability of succeeding at the trial.



18. Applying the cited case law, the applicants have demonstrated through the surveyor's report that there are permanent houses on the portion of the suit property which the respondent has admitted he seeks to recover. An applicant for an injunction need not prove title to the land. Order 40 Rule (1) of the Civil Procedure Rules requires that by an affidavit, he proves that the land in dispute is in danger of being wasted, damaged or alienated, or threatened with disposal or removal by the opposite party. I think the applicants have raised interests which, in law, are overriding in nature. The said rights are binding on the land if proved at the trial.
19. In the absence of an injunction, the applicants and their homestead risk eviction or demolition. The inconvenience to the applicants, would be more than that likely to be suffered by the respondent. The lower risk of injustice, in my view, is to maintain the subsisting status quo by issuing a temporary injunction until the rights of the parties are determined on merits at the full hearing.
20. The upshot is that I allow the application dated 12/2/2025.
21. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 25TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Kipkoech for Chebii for the plaintiff present

Gemenet for the respondent present

HON. C.K. NZILI

JUDGE, ELC KITALE.

