



**Sirailmongi v Nang’ea (Enviromental and Land Originating Summons  
E014 of 2024) [2025] KEELC 4691 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4691 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E014 OF 2024  
MN MWANYALE, J  
JUNE 24, 2025**

**BETWEEN**

**JOSEPH LEMAYIAN SIRAILMONGI ..... APPLICANT**

**AND**

**OLODARU OLBUKABU NANG’EA ..... RESPONDENT**

**RULING**

1. The Application dated 21/10/2024 is subject of this Ruling.
2. The Applicant Mr. Joseph Lemayian Sirailmongi vide his said application seeks injunctive orders against the Respondent. The orders sought are as follows:
  - i. Spent.
  - ii. That pending the hearing and determination of this suit, an order of injunction do issue restraining the Respondent/Defendant whether by himself or his representatives, servants, agents, Government entities and/or assigns from trespassing onto, fencing off, cultivating and/ or in any manner whatsoever interfering with or otherwise dealing with the property known as Transmara/Kapune/276 registered in the name of the Defendant/Respondent.
3. Grounds in support of the application are that the Plaintiff/Applicant purchased parcel of land known as Transmara/Kapune/276 in 1997 and immediately took possession until 2024 when the Defendant/ Respondent forcefully entered, ploughed and plated sugarcane and maize thereon.
4. That plaintiff acquired tittle by adverse possession by virtue of continuously, quietly openly, uninterrupted occupying and possessing an acre from parcel C.R No. Transmara/Kapune/276 (suit property) located in Kapune since 21<sup>st</sup> March 1997.



5. The application is supported by the Applicants affidavit in which he reiterates the grounds in support of the application and has exhibited as annexures the Agreement for sale dated 21/8/1997, photographs over the suit property, as well as an official search over the suit property.
6. In opposition to the application the Respondent Olodaru Olbukabu Nangea filed a Replying affidavit in which he deposes that:
  - i. He is the registered owner of the suit property and he had established a home over the suit property.
  - ii. Plaintiff has not been staying on the suit property and the issue of plaintiff having purchased is a figment of imagination.
  - iii. That the Applicant parcel of land is Transmara/Kapune/205 while the Respondent property is Transmara/Kapune/276, which properties are distinct with a valley separating the two parcels.
  - iv. The Respondent thus sought for dismissal of the application.
7. Parties were directed to file submissions on the application and in a nutshell the parties' submissions are summarized as follows;

#### **Application's submission**

8. It is the Applicant's submission that the Respondents sold to him one acre and he took possession thereof and the said Acre belongs to him.
9. The said Acre is being on the verge of being wasted and/or alienated and sold to 3<sup>rd</sup> parties hence the need to injunct the Defendant.
10. Reliance was placed in the decisions in the case of Peter Kairu Gitu Vs. KCB Bank and Another as well as Hezron Kamau Gichuru Vs. Kianjola Enterprises

#### **Respondent's Submission**

11. The Respondent acting in person has filed submissions on the Originating summons as opposed to the injunction application before court.

#### **Issues for determination**

12. Having analysed the application, the affidavits filed in support of the application, and the submissions, the court frames the following as issues for determination?
  - i. Whether the application has met the threshold for grant of an injunction?
  - ii. Who bears the cost of the application?

#### **Analysis and determination**

13. The principles of grant of an interlocutory Injunction have been settled and are well known, as stated in Giella Vs Cassman Brown. The principles are;

“Firstly, an Applicant must show a prima facie case with a probability of success, secondly an interlocutory injunction will not normally be 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.”

14. Has the Applicant established a prima facie case?
15. A prima facie was defined in the case of Mrao Limited Vs. First American Bank Limited as follows:

“which on the material presented by the court 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...’ The court later in the said decision stated as follows “.....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....”
16. In his application the Applicant averred having purchased suit property measuring one acre and taken possession thereof in 1997, he exhibited an Agreement for sale in respect of the said one acre.
17. The Respondent did not respond to the issue of the Agreement for sale but instead generally stated that the Agreement for sale was a figment of imagination by the Applicant.
18. The court finds that the failure to respond to the Agreement for sale by the Respondent means that the Applicant has established a prima facie case, that he bought the said acre, and that the Respondent is infringing of that acre by ploughing the said without the Applicant’s consent.
19. The Applicant has thus established a prima facie case with a probability of success.
20. On the two remaining principles the Applicant seeks prescriptive rights of adverse possession in the suit land and if the same is wasted, damages will not be an adequate relief and having had possession of the same since 1997, the balance of convenience equally filts in the Applicant’s favour.
21. In a nutshell, the Applicant has proven that he is deserving of the orders of injunction the court notes that a Restriction was already registered against the title in accordance with the search exhibited by the Respondent, hence the Respondent cannot sale the suit property, but the Respondent ought to be restrained from cultivating the area.
22. I thus allow the application in terms that;
  - i. The Respondent by himself, his servants and/or agents is hereby restrained from cultivating, farming and/or herding cattle in the portion claimed by the Applicant measuring one acre in Transmara/Kapune/276 pending hearing and determination of the suit.
  - ii. Orders accordingly.

**DATED AT KILGORIS THIS 24<sup>TH</sup> DAY OF JUNE 2025.**

**HON. M.N. MWANYALE**

**JUDGE**

In the presence of

C/A – Emmanuel/Sylvia/Sandra

Mr. Ochwangi for the Applicant

N/A for the Respondent

