



**Angwenyi v Kibias & 3 others (Environmental and Land Originating
Summons E015 of 2024) [2025] KEELC 4633 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4633 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E015 OF 2024**

EM WASHE, J

JUNE 19, 2025

BETWEEN

PAULINE MOKEIRA ANGWENYI APPLICANT

AND

JOSIAH KEMEBIR KIBIAS 1ST RESPONDENT

JOSEPH NDAYALA MUYESU 2ND RESPONDENT

ANYONE AUCTIONEERS 3RD RESPONDENT

UASIN GISHU COUNTY 4TH RESPONDENT

RULING

1. The Applicant in this Originating Summons (hereinafter referred to as “the Applicant”) filed a Notice of Motion Application dated 27.11.2024 (hereinafter referred to as “the present Application”) seeking the following Orders against the 1st to 4th Respondents (hereinafter referred to as “the Respondents”); -
 - a. That the matter be certified as urgent and the same be heard ex-parte in the first instance. (spent)
 - b. That this Honourable Court be pleased to grant a temporary injunction restraining the 2nd and 3rd Respondents whether by themselves, their agents and/or servants from threatening to end and/or forcefully evicting and/or removing the Applicant from the suit property pending the hearing and determination of this Application. (SPENT)
 - c. That an Order of Stay of execution of the Order issued in Eldoret ELC Appeal No. 8 OF 2014 be issued pending the hearing and determination of this Application.
 - d. That an Order of Stay of execution of the Order issued in Eldoret ELC Appeal No. 8 OF 2014 be hereby issued pending the hearing and determination of this Originating Summons.



- e. That costs of this Application be awarded to the Applicant.
2. The grounds upon which the prayers above are founded are contained in the body of the present Application as well as the Supporting Affidavit of the Applicant sworn on the 27.11.2024 and can be summarised as follows; -
- a. The Applicant stated that there is a likelihood of the 1st and 2nd Respondents evicting her from the property known as LR.NO.UASIN GISHU/ILLULA/126 (hereinafter referred to as “the suit property”.)
 - b. If this Court does not grant the prayer for injunction sought hereinabove, there is a likelihood that the present OS will be rendered nugatory by the time it is heard and determined.
 - c. The Applicant further stated that originally, she purchased a portion 0.798 of an Acre from the 1st Respondent and fully settled the purchase price therein.
 - d. Later on, the 1st Respondent sold off the entire suit property including the portion purchased by the Applicant to the 2nd Respondent herein and a title deed issued in his favour thereof.
 - e. Thereafter, various litigations were instituted to deal with the conflicting interests wherein the 2nd Respondent obtained an Eviction Order against the Applicant through the proceedings known as Eldoret ELC Appeal No. 8 OF 2014 on the 18.01.2024.
 - f. Based on the Eviction Orders issued on the 18.01.2024, the 2nd Respondent has now issued an eviction notice against the Applicant.
 - g. The Applicant stated that he is the lawful owner of a portion of the suit property for the last 19 years and has invested heavily on the same by planting trees, cultivating the same and any eviction therefore would be adverse to his occupation and/or ownership.
 - h. In essence, the Applicant pleaded that the Court should grant him the Orders sought in the present Application pending the hearing and determination of the present OS.
3. The present Application was duly served on the Respondents.
4. However, it was only the 2nd Respondent who opposed the same by filing a Replying Affidavit dated 15.01.2025 in which he stated as follows; -
- a. The 2nd Respondent stated that the present Application was one that is full of misrepresentation, incompetent, vexatious and amounts to abuse of the Court process.
 - b. The 2nd Respondent informed the Court that the ownership of the suit property was the main issue in the proceedings known as Eldoret ELC Appeal No. 8 OF 2014.
 - c. Upon a hearing on merit in the proceedings known as Eldoret ELC Appeal No. 8 OF 2014, the Court made a finding that the suit property belonged to the 2nd Respondent through its Judgement and/or Decree dated 11.07.2018.
 - d. Based on the Judgement and/or Decree dated 11.07.2018, the 2nd Respondent was issued with the Title Deed to the suit property.
 - e. The 1st Respondent being aggrieved by the Judgement and/or Decree dated 11.07.2018 in the proceedings known as Eldoret ELC Appeal No. 8 of 2014 filed an Appeal before the Court of Appeal which was recorded as Court Of Appeal Civil Appeal No. 112 of 2018.



- f. This Appeal known as Eldoret Court of Appeal No. 8 OF 2014 was heard on merit and the Court of Appeal upheld the Judgement and Decree pronounced on the 11.07.2018 in the proceedings known as Eldoret ELC Appeal No. 8 OF 2014.
 - g. The Applicant through an Application dated 24.01.2024 filed in the proceedings known as Eldoret ELC Appeal No. 8 OF 2014 sought to be joined in the said proceedings based on the fact that the Orders issued on 11.07.2018 would adversely affect her.
 - h. However, on the 29.01.2024, the Court dismissed the Applicant's Application dated 24.01.2024 based on the ground that it did not have jurisdiction.
 - i. Since the 29.01.2024, the Applicant has never preferred any Appeal against the said Ruling and in essence therefore, this Court has no jurisdiction to hear and/or entertain the present Application.
 - j. The 2nd Respondent proceeded to plead that the Applicant herein is not in occupation of any portion of land within the suit property and the present OS was only geared toward frustrating the occupation by the 2nd Respondent as granted in the previous proceedings.
 - k. In conclusion, the 2nd Respondent sought this Court to dismiss the present Application with costs.
5. The Replying Affidavit by the 2nd Respondent was duly served on the Applicant who filed a Supplementary Affidavit sworn on the 26.02.2025 to which she stated as follows; -
- a. The Applicant denied the allegations that her application was based on misrepresentation and/or concealment of material facts.
 - b. The Applicant further stated that she was not aware of her name being included in the application dated 24.01.2024 as one of the Interested Parties as she did not give any instructions and/or consent to that effect.
 - c. Consequently therefore, the 2nd Respondent did not have any evidence to show and/or confirm that indeed she is the one referred to in the Application dated 24.01.2024.
 - d. The Applicant averred that the present OS was not an attempt to have this Court revisit its judgement pronounced on the 11.07.2024 but to determine the issue of adverse possession based on the 19 years that she had been in occupation and use of the portion of land within the suit property.
 - e. In essence, the Applicant concluded the Further Affidavit by insisting that the Court had the relevant jurisdiction to hear and determine this long-standing dispute for the interest of justice.
6. After the filing and service of this Supplementary Affidavit, the Court directed that the present Application would be canvassed by way of written submissions.
7. The Applicant then filed her submissions dated 02.04.2025 while the 2nd and 3rd Respondents filed their submissions on the 14.04.2025.
8. The Court has indeed carefully gone through the present Application, the Replying Affidavit, the Further Affidavit and the submissions by the parties and identifies the following issues for determination.

Issue No. 1- is the applicant entitled to the prayer of injunction sought for in the present application?



Issue No. 2- is the applicant entitled to the stay of execution orders sought for in the present application?

Issue No. 3- Is The Present Application Merited?

Issue No.4- Who bears the costs of the present application?

9. The Court having identified the above issues for determination, the same will now be discussed herein below.

Issue No. 1- Is The Applicant entitled to the prayer of injunction sought for in the present application?

10. The first issue for determination is whether the prayer for injunction sought for in the present Application should be granted.
11. To begin with, the prayer as pleaded by the Applicant is seeking for a temporary injunction pending the hearing and determination of the present Application.
12. Looking at the wording of the temporary injunction being sought, it is clear that it has been overtaken by events with the pronouncement of this Ruling.
13. As regard whether or not a Temporary Injunction should be issued pending the hearing and determination of the pending OS, the Applicant had a duty to satisfy the Court of the conditions provided under Order 40 of the Civil Procedure Rules, 2010.
14. Unfortunately, the Applicant failed to invoke the provisions of Order 40 of the Civil Procedure Rules, 2010 but instead invoked the provisions of Order 45 and 51 of the Civil Procedure Rules 2010.
15. For clarity purposes, Order 45 of the Civil Procedure Rules, 2010 deals with Applications for Review while Order 51 of the Civil Procedure Rules, 2010 deal with proceedings against the Government.
16. Be as it may, this Court will still proceed and evaluate whether or not the Applicant is entitled to a prayer of a temporary injunction pending the hearing and determination of the pending OS.
17. The Court of Appeal in the of Ngurman Limited-versus- Jan Bonde Nielsen & 2 Others Civil Application No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application, the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, if in any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. it is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”

18. In another case of Pius Kipchirchir Kogo-versus- Frank Kimeli Tenai (2018) eKLR, the Court expressed itself as follows;-

“irreparable injury means that the injury must be one that cannot be adequately In 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.

19. In the same case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai (2018) EKLK the Court went further to discuss the principle of balance of convenience as :

“The meaning of balance of convenience in favor 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 plaintiff's to show that the inconvenience caused to them be greater than that which may be caused to the defendant's inconvenience be equal, it is the plaintiff who suffer.

In other words, the plaintiff have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater which is likely to arise from granting”

20. Based on the principles set out in the above authority, this Court will now evaluate the strength of the three ingredients required to grant an Injunction.

i. Prima Facie Case

The first ingredient in considering a prayer for injunction is whether there is a prima facie case established by the Applicant.

The Applicant in the present application has filed an Originating Summons against the 2nd Respondent.

The Applicant's allegation is she purchased a portion measuring 0.798 of an Acre of the suit property from the 1st Respondent on or about 29.05.2005.

However, a dispute arose between the 1st Respondent and the 2nd Respondent and on the 27.09.2024, the Title of the suit property was registered in the name of the 2nd Respondent based on a Judgement and/or Decree issued on the 11.07.2018.

The Applicant submitted that she was not aware of the proceedings between the 1st and 2nd Respondent and has been in occupation of her portion of land for the last 19 years.

The Court in deciding this issue has gone through the pending OS and takes note that it does not include an Official Search and/or Certified Copy of the Register as provided for under Section 37 Rule 7 of the Civil Procedure Rules, 2010.

Section 37 Rule 7 of the Civil Procedure Rules, 2010 provides as follows; -

- “(1) An Application under Section 38 of the [Limitation of Actions Act](#) shall be made by Originating Summons.
- (2) The Summons shall be supported by an affidavit to which a Certified Copy of the Title to the land in question has been annexed.”

Looking at the pending OS, it is clear that the Applicant did not annex the correct certified copy of the Title.



The Title attached to the pending OS is one which was issued on the 27.05.1998 and cancelled through the proceedings known as Eldoret ELC Appeal No.8 OF 2014.

In other words, the pending OS is not supported by a Certified Copy of the title in existence at the time of its filing which is 27.11.2024 as envisaged under the mandatory provisions of Section 37 Rule 7 of the Civil Procedure Rules, 2010.

The net effect of this omission is that the pending OS is not compliant with the law and cannot be said to establish a prima facie case through adverse possession based on the 12 years period provided under Section 7 of the Limitation of Actions Act, Cap 22 keeping in mind that the 2nd Respondent's title was issued on the 27.09.2024.

Irreparable Injury or Harm

The second ingredient is whether the Applicant has demonstrated an injury that is so severe that it cannot be compensated by way of damages.

The Applicant in the present Application pleaded that she has been in occupation and use of the portion she purchased for the last 19 years through cultivating, grazing cattle and having planted trees on the same.

The 2nd Respondent in particular denied the occupation of the Applicant.

The Applicant in her submissions did not demonstrate the injury that would be occasioned if the Order of injunction was not issued that cannot be compensated by way of damages.

To this end, the Applicant failed to prove this ingredient at all.

Balance of Probability

On the issue of balance of probability, this court makes a finding that the same tilts against the Applicant based on the findings on Ingredient 1 and 2.

Issue No. 2- Is the Applicant entitled to the stay of execution orders sought for in the present application?

21. The second issue for determination is whether the Applicant is entitled to an Order of Stay of Execution of the proceedings known as Eldoret ELC Appeal No. 8 OF 2014 pending the hearing and determination of the pending OS.
22. The reason advanced by the Applicant in support of this prayer is that the pending OS will be rendered nugatory if the same is not granted.
23. The Respondent on the other hand has stated that this prayer is frivolous and mischievous because this Court can not issue an Order of Stay of Execution in another file that is not before it.
24. Secondly, the Respondent pleaded and submitted that the Applicant had made a similar application in the proceedings known as Eldoret ELC Appeal No. 8 OF 2014 on the 24.01.2024 but the same was dismissed for lack of jurisdiction on the 29.01.2024.
25. In essence, the Respondent was of the view that this Court has no powers and/or jurisdiction to alter and/or review the said Ruling dated 29.01.2024 through the present Application.
26. To begin with, it is important to point out that the proceedings known as Eldoret ELC Appeal No. 8 of 2014 were determined through a Judgement and/or Decree dated 11.07.20218 which was contained in the Replying Affidavit of the 2nd Respondent sworn on the 15.01.2025.



27. Thereafter, an Appeal known as Court of Appeal Civil Appeal No. 112 of 2018 was preferred to the Court of Appeal which was determined through a Judgement dated 31.03.2023 also contained in the Replying Affidavit of the 2nd Respondent sworn on the 15.01.2025.
28. Clearly therefore, the proceedings relating to both the proceedings known as Eldoret ELC Appeal No. 8 OF 2014 as well as Court of Appeal Civil Appeal No. 112 of 2018 have long been concluded and there is nothing to stay in either of them.
29. If the Applicant desires to seek any Stay of Execution Orders, the first port of call should be the Court of Appeal which was the last Court to handle the matter.
30. In essence, this Court does not have any jurisdiction to make any Orders relating to the proceedings known as Eldoret ELC Appeal No. 8 OF 2014 in the present file.

Issue No. 3- Is the present application merited?

31. Based on the determination of Issues No. 1 and 2 hereinabove, this Court is of the considered opinion and finding that the present Application is not merited.

Issue No.4- Who bears the costs of the present application?

32. The present Application not having been successful, Costs will be borne by the Applicant.

Conclusion

33. In conclusion, this Court hereby makes the following Orders as relates to the Application dated 27.11.2024; -
 - a. The Notice of Motion dated 27.11.2024 is not merited & therefore dismissed.
 - b. The Respondent is awarded costs of this application payable by the Applicant.

DATED, SIGNED & DELIVERED VIRTUALLY AT Eldoret ELC THIS 19TH DAY OF JUNE 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Advocates for The Applicant: Mr. Onderi holding brief Mr. Ayora

Advocates for The Respondent: Mr. Kibii for the 2nd and 3rd Defendants

