



**Oruchum & another v Kiboi (Environmental and Land Originating Summons  
E039 of 2024) [2025] KEELC 117 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 117 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E039 OF 2024  
BN OLAO, J  
JANUARY 22, 2025**

**BETWEEN**

**MOSES ITELA ORUCHUM ..... 1<sup>ST</sup> PLAINTIFF**

**KENNETH ODIKOR OTEBA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DAVID BARASA KIBOI ..... DEFENDANT**

**RULING**

1. Kenneth Odikor Oteba and Moses Itela Oruchum (the 1<sup>st</sup> and 2<sup>nd</sup> Applicants respectively) moved to this Court vide their Originating Summons dated 5<sup>th</sup> December 2024 in which they sought against David Barasa Kiboi (the Respondent), the main remedy that they have acquired by adverse possession the land parcel No North Teso/Aboloi/414.
2. Simultaneously with that Summons, the Applicants filed a Notice of Motion under Certificate of Urgency anchored on the provisions of Order 40 Rule 1 and Order 53 Rule 3 of the [Civil Procedure Rules](#). They sought the following orders:
  1. Spent.
  2. Spent.
  3. That an order of injunction be and is hereby issued restraining the Respondent whether by himself, his agents, relatives, workers and/or servants from evicting, trespassing, surveying or causing to be surveyed, selling, encroaching, grabbing, constructing, entering, remaining on or dealing in any manner whatsoever with the land parcel No North Teso/Aboloi/414 pending the hearing and final determination of this suit.
  4. That the cost of this application be provided for.



3. The gravamen of the application which is premised on the grounds set out therein and is supported by the affidavit of the 1<sup>st</sup> Applicant is that in 1971, the Applicants deceased fathers jointly purchased land from the Respondent's father one Ndiwa Kiboi Wananda (also deceased) and took possession thereof. That the said Ndiwa Kiboi Wananda refused to transfer the land to the Applicants' deceased fathers and instead sued them for trespass in Busia High Court Civil Suit No 17 of 2005 which was however dismissed for want of prosecution. The Applicants have continued residing on the suit land but were surprised when on 4<sup>th</sup> December 2024, the chief informed them that the owner of the land would be taking it over on 6<sup>th</sup> December 2024. They therefore filed this suit and an application to restrain the Respondent from evicting them from the land parcel No North Teso/Aboloi/414 pending the hearing and determination of this suit.
4. When the application was placed before me on 5<sup>th</sup> December 2024, I directed that it be served upon the Respondent within 7 days together with the Applicants' submissions. The Respondent would then have 14 days from the date of service to file and serve his response and submissions. The matter would then be mentioned on 21<sup>st</sup> January 2025 to confirm compliance and take a date for ruling.
5. When the case came up for mention on 21<sup>st</sup> January 2025 both Mr Otieno instructed by the firm of Masiga, Otieno & Associates Advocates for the Applicant and Mr Shikhu instructed by the firm of Musundi Lukoye & Company Advocates for the Respondent addressed me virtually. Mr Otieno informed the Court that though the Respondent's advocates Musundi Lukoye & Company Advocates had filed a Notice of Appointment on 6<sup>th</sup> December 2024, no reply had been filed in response to the Motion.
6. Mr Shikhu's reply was that he did not have full instructions to reply to the application and sought time to do so. The Court declined to grant the Respondent time taking into account the fact that his counsel had filed a Notice of Appointment on 10<sup>th</sup> December 2024. The Motion is therefore not opposed.
7. I have considered the Notice of Motion dated 5<sup>th</sup> December 2024 un-opposed as it is. The Applicants have deposed that they have remained in occupation and possession of the land parcel No North Teso/Aboloi/414 since 25<sup>th</sup> July 1971 when their late fathers jointly purchased it from the Respondent's late father. On 4<sup>th</sup> December 2024, the Chief asked them to start vacating the said land as the owner would be taking it over on 6<sup>th</sup> December 2024. All those averments have of course not been rebutted. As persons in occupation and possession of the land in dispute, the Applicants no doubt have an interest therein which must be protected pending the full hearing of the case when the ownership thereof will be determined. A *prima facie* case is established.
8. And if, as the Applicants claim, they have used the suit land since 1971, this Court must conclude, in the absence of any other evidence, that unless the order sought is granted their loss will be irreparable by an award of damages.
9. The up-shot of all the above is that having considered the Notice of Motion dated 5<sup>th</sup> December 2024, I issue the following orders:
  1. The Respondent whether by himself, his agents, relatives, workers or servants are hereby restrained by an order of interlocutory injunction from trespassing on, surveying or causing to be surveyed, selling, encroaching, grabbing, constructing on, entering, remaining or in any manner whatsoever dealing with the land parcel No North Teso/Aboloi/414 pending the hearing and determination of this suit or any other orders from this Court.



2. The parties are reminded that in accordance with the provisions of Order 40 Rule 6 of the Civil Procedure Rules, this suit must be heard and determined within 12 months from to-day otherwise the injunction shall lapse unless otherwise extended by this Court.
3. Costs shall be in the cause.

**BOAZ N. OLAO**

**JUDGE**

**22<sup>ND</sup> JANUARY 2025**

**RULING DATED, SIGNED AND DELIVERED ON THIS 22<sup>ND</sup> DAY OF JANUARY 2025 BY WAY OF ELECTRONIC MAIL.**

**BOAZ N. OLAO**

**JUDGE**

**22<sup>ND</sup> JANUARY 2025**

