



Mburu (Suing for and on behalf of Kweli Ministry Church in Eldoret) v Kipkorir (Sued as the Administrator of the Estate of Benjamin Kipkorir) (Environmental and Land Originating Summons E018 of 2025) [2025] KEELC 6318 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6318 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E018 OF 2025
EM WASHE, J
SEPTEMBER 18, 2025

BETWEEN

BENJAMIN MUKABI MBURU (SUING FOR AND ON BEHALF OF KWELI MINISTRY CHURCH IN ELDORET) PLAINTIFF

AND

KIGEN NGELECH KIPKORIR (SUED AS THE ADMINISTRATOR OF THE ESTATE OF BENJAMIN KIPKORIR) DEFENDANT

RULING

1. The Plaintiff (hereinafter referred to as “the Applicant”) filed a Notice of Motion dated 07.05.2025 (hereinafter referred to as “the present Application”) seeking the following Orders against the Defendant (hereinafter referred to as “the Respondent”); -
 - a. That the application be certified urgent and service be dispensed with in the first instance. (SPENT)
 - b. That in the interim, the Court do issue on Order of injunction restraining the Respondents jointly and severally whether by themselves, their servants, agents and or assigns from trespassing, entering, interfering, cultivating on, or in any other manner interfering with that parcel No. Eldoret Municipality Block 9/1000 currently being utilized by the Applicants pending the hearing and determination of this application inter-partes. (SPENT)
 - c. That the Respondent be restrained by way of an injunction restraining the Respondent jointly and severally whether by themselves, their servants, agents and/or assigns from trespassing, entering, interfering, cultivating on or in any manner interfering with that parcel of land No. Eldoret Municipality/Block 9/1000 currently being utilized by the Applicants pending the hearing and determination of the suit.



2. The prayers sought in the present Application are premised on various grounds outlined in the body as well as the supporting affidavit sworn on the 07.05.2025 which can be summarized as follows; -
 - i. The Applicant entered and took possession of the property known as Issue No.Eldoret Municipality Block 9/1000 (hereinafter referred to as “the suit property in the year 2008.
 - ii. The Applicant disclosed to the Court that upon entering and/or taking possession of the suit property in 2008, he proceeded to establish a church on the same.
 - iii. The Applicant admitted that the suit property is registered in the name of the late Benjamin Edgar Kipkorir who is now deceased and is represented by the Respondent herein.
 - iv. The Applicant stated that his entry and/or occupation of the suit property was without the consent of the registered owner, open to the registered owner and without any interruption since 2008.
 - v. The Applicant averred that since his entry and occupation of the suit property, neither the registered owner or the legal representatives have ever taken steps to re-enter and/or interrupt his occupation for over 12 years thereafter.
 - vi. However, in the year 2021, the Respondent who is the legal representative of the registered owner attempted to re-enter the suit property unlawful by engaging goons who attempted to demolish the structures that had been erected on the suit property.
 - vii. Based on the Respondent’s unlawful attempt to demolish the Applicant’s structures on the suit property, the Applicant filed the proceedings known as Eldoret Chief Magistrate Court ELC No.. E081 of 2021.
 - viii. However, the proceedings known as Eldoret Chief Magistrate Court ELC No.. E081 OF 2021 were withdrawn on the basis that the Court his not have jurisdiction.
 - ix. The Applicant averred that the evidence presented before the Court has demonstrated a prima facie case to warrant the granting of Injunctive Orders restraining the Respondent from interfering with his occupation and use of the suit land pending the hearing and determination of the suit.
 - x. The Applicant was of the considered view that unless the Respondent is restrained by way of an Injunction, he may proceed to unlawfully evict the Applicant and interfere with the extensive developments on the suit land and which loss may not be compensated by an award of damages.
3. The present Application was duly served on the Respondent who opposed the same by filing a Replying Affidavit dated 26.05.2025 (hereinafter referred to as “the Respondent’s Replying Affidavit”)
4. The Respondent’s Replying Affidavit opposed the prayers sought in the present Application on the following grounds; -
 - i. The Respondent admitted that the suit property is registered in the name of Benjamin Edgar Kipkorir deceased.
 - ii. The Respondent informed the Court that he was the legal administrator of the Estate of Benjamin Edgar Kipkorir and therefore authorized to handle the issues at hand.



- iii. The Respondent stated that the Applicant entered and/or took possession of property next to the suit property and only started using the suit property as a children's playing ground in the year 2020.
 - iv. Due to the unlawful entry and use of the suit property as a children's playing ground in the year 2020, the Respondent wrote a Demand letter dated 26.01.2021 requesting the Applicant to cease using the suit property thereof.
 - v. Consequently, the Respondent averred that the Applicant herein had not established occupation of the suit property for a period of 12 years to prove any prima facie case based on adverse possession.
 - vi. The Respondent further pleaded that the Applicant has not demonstrated any prejudice and/or loss that would be visited on him if the injunction is not issued incapable of being compensated by costs.
 - vii. In conclusion, the Respondent sought this Court to dismiss the present Application with costs.
5. The Respondent's Response was duly served on the Applicant who filed a Supplementary Affidavit sworn on the 12.6.2025 and pleaded the following facts; -
- i. The Applicant admitted that the Church was constructed on the property known as Issue No. Eldoret Municipality Block 9/997 but has also been in occupation and use of the suit property since 2008.
 - ii. The Applicant insisted that the property known as Issue No. Eldoret Municipality Block 9/997 has not been demarcation and/or fence and the Applicant has been in occupation on both the suit property and Issue No. Eldoret Municipality Block 9/997.
 - iii. The Applicant further clarified that the entry of the Church erected on L.R. No. Eldoret Municipality Block/997 is through the suit property since the year 2008 and both properties have been occupied as one and the same.
 - iv. Consequently, the Respondent's ownership right on the suit property were extinguished after the prescribed 12 years and therefore the balance of convenience tilts in favour of the Applicant or an Order of Status Quo.
 - v. It was therefore the Applicants submission that the present Application is merited and should be granted.
6. The Court directed parties to file written submissions in support and opposition of the present Application.
7. The Applicant in compliance with the above direction filed his submissions dated 08.06.2025 together with authorities while the Respondent filed his submissions dated 08.07.2025.
8. The Court has taken time to peruse the present Application, the Response by the Respondent, the Supplementary Affidavit as well as the submissions and identifies the following issues for determination; -
- Issue No. 1- Has the applicant satisfied the conditions required for the granting of an injunction?
- Issue No.2- Is the present application merited or not?
- Issue No. 3- 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- Has the applicant satisfied the conditions required for the granting of an injunction?

10. To begin with, the law governing granting of Injunctions is Order 40 (1) (2) of the Civil Procedure Rules which provides as follows: -

1. Where in any suit it is proved by affidavit or otherwise: -

(a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree;

(b),

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

11. Section 13 (7) (a) of the *Environment and Land Court Act*, 2015 further empowers this Court to grant temporary Injunctive Orders.

12. In the case of *Giella-versus-Cassman Brown & Company Limited* (1973) EA 358, the Court of Appeal established the principles for consideration of injunction applications as follows; -

“a). where he is required to demonstrate that he has a prima facie case with serious triable and arguable issues with a probability of success against the respondent. The test on prima facie case does not mean establishing a case beyond reasonable doubt;

b). He will suffer irreparable harm/injury which cannot be adequately compensated by damages;

c). Balance of convenience: In granting an injunction under this condition the court must be satisfied that the hardship or inconvenience which is likely to be caused to the applicant by declining the injunction will be greater than that which is likely to be caused to the respondent.

13. An applicant is duty bound to satisfy these 3 principles/elements sequentially.

14. The existence of one element alone does not automatically entitle an applicant to an order of injunction without considering the other elements. See *Kenya Commercial Finance Bank Company Limited-versus-Afraha Education Society* (2001) Vol.1 EA 86.

15. Beginning with the first element, an applicant seeking an order of injunction must demonstrate a prima facie case which raises arguable and triable issues with a probability of success.



16. The Court of Appeal in *MRAO Limited-versus- First American Bank of Kenya & 2 Others* (2003) KLR 125 explained what amounts to a prima facie case as follows; -

“a prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
17. Procedurally, a prima facie case should be established from the primary pleading which in this case is the pending Originating Summons dated 07.05.2025 and the documents attached thereto.
18. According to the Originating Summons dated 07.05.2025, the Applicant sought for orders of adverse possession over the suit property on the basis that it had entered and/or taken possession by establishing a Church on the same in the year 2008 and has been in occupation for over 12 years since then.
19. The Applicant in particular at Paragraph 3 of the Supporting Affidavit sworn in support of the Originating Summons dated 07.05.2025 stated as follows; -

“3. That sometime in 2008, the Church assumed possession of that parcel No. Eldoret Municipality Block 9/1000 where together with adjacent parcel where the church has been utilizing the same as part of the church.”
20. The Respondent on the other hand disputed the allegation that the Applicant is occupying the suit property and in particular the allegation that he has built a church on the same.
21. The Respondent placed before the Court a Survey Report dated 26.09.2022 which demonstrated that the Church had actually been built of the property known as Issue No.Eldoret Municipality Block 9/997 and not the suit property.
22. The Respondent informed the Court that the Applicants entry and/or use of the suit property commenced in the year 2020 and not 2008 as had been pleaded by the Applicant.
23. The Applicant in his Supplementary Affidavit dated 12.06.2025 admitted that indeed the Church had been developed on Issue No.Eldoret Municipality Block 9/997 and not on the suit property.
24. The Applicant insisted that the suit property serves as the entrance of the Church since the year 2008 and the entire area in occupation and use by the church since 2008 includes the suit property.
25. In an effort to establish whether the Applicant has demonstrated a prima facie case or not, the Court is inclined to interpret the Applicants pleadings at the inception.
26. Looking at the issues raised for determination in the Originating Summons dated 07.05.2025 as read with the Supporting Affidavit sworn on the 07.05.2025 in particular Paragraph 3, the interpretation of the Court on a plain reading of these documents is that the church was established on the suit property while the other properties form part of the church.
27. In other words, the Church is what was established on parcel Issue No. Eldoret Municipality Block 9/1000 while the other part that forms the Church were established on Issue No.Eldoret Municipality Block 9/997.
28. However, based on the finding of the Surveyor’s Report dated 26.09.2022, this is actually not the true position on the ground.



29. The Surveyor's Report dated 26.09.2022 demonstrates that the Church is actually developed on Issue No.Eldoret Municipality Block 9/997 and not the suit property.
30. This fact has also been admitted by the Applicant in his Supplementary Affidavit dated 12.06.2025.
31. In other words, the Applicant has not established any prima facie case that the Church was built and/or has been in occupation of the suit property since 2008.
32. Although the Applicant pleaded that the suit property forms part of the entrance to the church and is enclosed in the fence that demarcates the church by producing various pictures, this Court is slow to believe this evidence keeping in mind that the Applicant either withheld crucial information and/or concealed virtual information on the portion of land which the church was actually developed with a view of obtaining a temporary injunction from the Court.
33. It is difficult for this Court to believe that the Applicant was never aware that the church was built on parcel no. Issue No.Eldoret Municipality Block 9/997 since 2008 until when the Surveyor's Report dated 26.09.2022 was presented to Court.
34. On the second principle, the Applicant is required to demonstrate whether the loss to be occasioned if an order of injunction is not granted cannot be compensated by law of damages.
35. In the case of Nguruman Limited-versus- Jan Bonde Nielsen & 2 Others (2014) eKLR, the Court defined irreparable injury held as follows;

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
36. The Applicant in the present Application stated that a Church had been established on the suit property since entry in the year 2008.
37. However, based on the determination made in Issue No. 1 hereinabove, it is clear that the church is not on the suit property but on parcel no. Issue No.Eldoret Municipality Block 9/997.
38. The Applicant in his Supplementary Affidavit dated 12.06.2025 insisted that the suit property is still part of the church compound and presented various pictures showing some structures and natural fence around the suit property.
39. While the Court appreciates the Applicant's efforts to present documentary evidence that it also occupies the suit property, there is no evidence presented to the Court that the pictures adduced in the Supplementary Affidavit actually are within the suit property or are still within the property known as Issue No.Eldoret Municipality Block 9/997.
40. The Applicant in his Supplementary Affidavit dated 12.06.2025 pleaded in Paragraph 4 that there is no distinct boundary between the property known as Issue No. Eldoret Municipality Block 9/997 where the church is developed and the suit property.



41. Even if the Court was to believe that the pictures produced in the Supplementary Affidavit sworn on 12.06.2025 were actually on the suit property, the said developments are temporary in nature and can be quantified in terms of damages in the event there is any destruction to the same.
42. The only concern to the Court is the threat of disposal of the suit property before the pending Originating Summons is heard and determined.
43. Unfortunately, the Applicant did not demonstrate any threat of the property being disposed by the Respondent save for the fact that the same is under succession in the proceedings known as Milimani Succession Cause No. 695 of 2016.
44. As such, this Court is of the considered opinion and finding that if any injury will be visited on the Applicant regarding the temporary developments within the suit property, then the same can be compensated by way of damages.
45. As to the last principle of which side the balance of convenience tilts, this Court is of the considered view and finding that the Applicant having failed to satisfy the two principles of prima facie case and irreparable loss, then the balance tilts in favour of the Respondent and not the Applicant.

Issue No.2- Is the present application merited or not?

46. Based on the determination in Issue No.1, this Court is of the finding that the present Application is not merited and therefore fails.

Issue No. 3- Who bears the costs of the present application?

47. The present Application having been found to lack merit, the Applicant is condemned to pay costs to the Respondent.

Conclusion

48. In conclusion, the Court hereby makes the following Orders in determination of the present Application; -
 - a. The notice of motion dated 07.05.2025 is not merited and is therefore dismissed.
 - b. The applicant is condemned to pay the costs of the application to the respondent herein.

DATED, SIGNED AND DELIVERED IN ELDORET THIS 18TH DAY OF SEPTEMBER, 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Counsel for the Applicant: Mr. Korir

Counsel for the Respondent: Mr. Asesso Holding Brief for Mr. Barasa.

