



Mwega v Hezekiah & another (Environmental and Land Originating Summons E010 of 2025) [2025] KEELC 6925 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6925 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2025
BM EBOSO, J
OCTOBER 9, 2025

BETWEEN

CORNELIUS MUTHURI MWEGA APPELLANT

AND

EZRA ERICK NYAMU HEZEKIAH 1ST RESPONDENT

RODNEY ELIUS MURITHI NYAMU 2ND RESPONDENT

RULING

1. The plaintiff and the 1st defendant are siblings. The 2nd defendant is a son to the 1st defendant and a nephew to the plaintiff. Land parcel number Nkuene/Upper-Mikumbune/1108, which is the subject matter of this suit, was previously registered in the name of Isaberra Nyai Hezekiah, the late mother to the plaintiff and to the 1st defendant. She died in 2010. The suit land is one of the subdivisions that were surveyed and created out of land parcel number Nkuene/Upper-Mikumbune/714, which measured 7.77 hectares and was registered in the name of Isaberra Nyai Hezekiah [hereinafter referred to as “the deceased”]. The four subdivision parcels are Nkuene/Upper-Mikumbune/1105 – 1108. They were all transferred to the deceased’s four sons in 1990. Parcel number 1108 [the subject matter of this suit] measures 0.849 hectares and is the smallest of the four subdivisions. The key issue in this suit is whether the plaintiff has acquired ownership of parcel number Nkuene/Upper-Mikumbune/1108 through adverse possession. For convenience, the parcels of land featuring in this ruling will be identified by their parcel numbers only, without capturing their common section and block number, Nkuene/Upper-Mikumbune. Parcel number 1108 will be identified simply as “parcel number 1108” or “the suit land”.
2. The plaintiff took out an originating summons dated 7/5/2025 inviting this court to determine various questions under Section 38 of the *Limitation of Actions Act* and Order 37 rule 7 of the *Civil Procedure Rules*. He urged the court to find that he has acquired ownership of the suit land through adverse possession.



3. Alongside the originating summons, the plaintiff brought a notice of motion dated 7/5/2025, seeking:
 - (i) an interlocutory order maintaining status quo to the extent that the respondents and their agents are stopped and/or barred from selling, charging, disposing off, evicting him, entering onto, encroaching upon, trespassing onto, ploughing, cultivating, grazing on, threatening to forcibly enter upon, fencing, interfering with his occupation of, possession of and/or in any manner dealing with and/or otherwise interfering with the suit land;
 - (ii) an order of inhibition barring registration of dealings in the suit land; and
 - (iii) an order directing the Officer Commanding Nkubu Police Station to enforce the above interlocutory orders. The said application is the subject of this ruling. The application is vehemently opposed by the defendants.
4. The application was premised on the grounds outlined in the motion and in the plaintiff's two supporting affidavits dated 7/5/2025 and 9/7/2025 respectively. It was canvassed through written submissions dated 10/7/2025, filed by M/s Otieno Obwanda & Company Advocates.
5. The case of the plaintiff/applicant is that the suit land is a subdivision that was surveyed and registered out of parcel number 714 in 1990. Parcel number 714 belonged to their late mother, Isabbera Nyai Hezekiah. The suit land is the portion where their family home is located and where they were raised. He has lived on the suit land for more than 30 years, having built his first house on the suit land in 1971. He contends that he is an occupier of the suit land who has a crystallized interest in the land under Section 30 of the repeated Registered Land Act. He further contends that he has developments on the suit land.
6. The plaintiff adds that, through an official search which he obtained recently, he discovered that the suit land was registered in the name of the 1st defendant in 1990 and in February 2024, the 1st defendant transferred the suit land to his son, the 2nd defendant. He urges the court to grant him the interlocutory orders.
7. The 1st defendant opposed the application through a replying affidavit dated 26/6/2025. The 2nd defendant opposed the application through a replying affidavit of even date. In addition, the two defendants filed joint written submissions dated 23/7/2025 through M/s Gichunge Muthuri & Co Advocates. The case of the defendants/respondents is that the plaintiff is a younger brother of the 1st defendant. Parcel number 1108 was given to the 1st defendant and transferred to him by their late mother in 1990 after the deceased subdivided her land, parcel number 714. The four subdivisions were given to the late matriarch's four sons in 1990. The plaintiff got a much bigger share, measuring 5.7 acres [parcel number 1106], while the 1st defendant got a smaller portion measuring 2.09 acres [parcel number 1108].
8. The defendants add that all the children of the late Isabbera grew up on the suit land because that is the portion where the home of the family matriarch was located. They state that the plaintiff relocated to the United States of America and lived there for many years. They further state that since his return to Kenya, the plaintiff has been living in Nairobi and still lives in Nairobi. They add that in 2017, the plaintiff requested and was allowed by the 1st defendant to use the late Matriarch's house as a campaign base when he vied for the South Imenti Parliamentary Seat, adding that the 1st defendant also allowed the plaintiff to use his animal shed to set up a demonstration poultry and cow projects since he was campaigning on the platform of uplifting the local farmers.
9. They term as dishonest the plaintiff's allegation that he did not know that the 1st defendant was the registered proprietor of the suit land, adding that their late mother openly transferred the four



subdivisions to her four sons and the plaintiff got subdivision parcel number 1106. They term the plaintiff a licensee who is abusing the licence granted by the 1st defendant, adding that the suit land is occupied by the 2nd defendant who lives on it permanently. The 1st defendant states that he lawfully transferred the suit land to the 2nd defendant since he trusts him to share the land with his siblings. They urge the court to reject the plea for interlocutory injunctive orders.

10. The court has considered the application, the responses to the application, and the parties' respective submissions. The key question to be determined in this ruling is whether the application satisfies the criteria for granting an ordinary interlocutory injunction by a trial court under Order 40 of the [Civil Procedure Rules](#).
11. The relevant criteria was outlined by the Court of Appeal for East Africa in the case of *Giella vs Cassman Brown & Co. Ltd* 91973) EC 358. First, the applicant is required to demonstrate a prima facie case with a probability of success. Secondly, the applicant is expected to demonstrate that he would stand to suffer irreparable injury/damage that may not be adequately indemnifiable through an award of damages if the injunction is not granted. Thirdly, should the court have doubt on the applicant's satisfaction of both or either of the above two requirements, the application should be disposed based on the balance of convenience.
12. Over the years, our superior courts have developed an additional principle relating to pronouncements that should be avoided at the stage of disposing a plea for interlocutory injunction. As a general principle, definitive or conclusive pronouncements should not be made on the key issues in the dispute at the stage of disposing an interlocutory application. Definitive and conclusive pronouncements on the key issues are to be reserved to be made in the judgment or other final disposal of the case.
13. Has the plaintiff demonstrated a prima facie case? Listed before this court today are two different cases relating to the suit land, parcel number Nkuene/Upper-Mikumbune/1108. The two different cases were filed by two different siblings against their elder sibling and a son to the said elder sibling. The two cases are:
 - (i) Meru ELCL Case No. E010 of 2025 (OS); and
 - (ii) Meru ELC L EO29 of 2025. Both cases were filed through M/s Otieno Obwanda & Company Advocates. The advocate who signed the covering certificates of urgency in both cases is Charles Otieno Obwanda.
14. In Meru ELCL Case No. E029 of 2025, the claimant is a sister to the plaintiff and to the 1st defendant in Meru ELCL Case No. E010 of 2025 (OS). She asserts that the suit land is trust property which was registered in the name of the 1st defendant to hold in trust for the children of the late Isaberra Nyai Hezekiah. She contends that all the children of the late matriarch have been utilizing and still utilize the suit land as their family home. She wants this court to make a declaration that the 1st defendant holds the suit land as a trustee and that the suit land is trust property. She similarly wants interlocutory injunctive orders based on her above case.
15. Through the same advocate, the plaintiff in Meru ELCL (OS) Case No. E1010 of 2025 [the present suit] has given a completely different and irreconcilable position regarding the suit land. The plaintiff claims to have acquired absolute ownership of the suit land through adverse possession. Adverse possession by a claimant is about possession and utilization of land to the exclusion of all other persons. Clearly the applicant and their common advocate appear not appreciate the legal implications of the irreconcilable positions which they have articulated in their respective cases before the court over the same parcel of land.



16. The evidence before court at this interlocutory stage is that the late Isaberra Nyai Hezekiah subdivided her land into four subdivisions in 1990 and caused the subdivisions to be registered in the names of her four sons. She continued to reside on the portion that was registered in the name of the 1st defendant until her demise in 2010. The 1st defendant has had a house on the said portion. At the moment, the 1st defendant's son [the 2nd defendant] stays in the house as his residence. In 2024, the 1st defendant conveyed the portion to the 2nd defendant. There is also interlocutory evidence that the plaintiff previously lived in the United State of America and currently resides in Runda, Nairobi.
17. Through the application under consideration, the plaintiff wants the 2nd defendant to be uprooted from the suit land. Against the above irreconcilable and contradictory cases presented by a common advocate serving two plaintiffs with irreconcilable cases over the same piece of land, the applicant wants to be given injunctive orders uprooting the 1st defendant from the suit land. Given the above irreconcilable and contradictory positions put forth by a common advocate, I doubt that the applicant has made out a prima facie case in the above circumstances.
18. On irreparable damage, the 1st defendant was given the suit land in 1990, about 35 years ago. The plaintiff was, similarly, given his own portion of the family land. The plaintiff has subdivided his portion. The plaintiff claims to have cow and poultry units together with some other developments on the suit land. The 1st defendant asserts that he allowed the plaintiff, as a sibling, to use part of his land and infrastructure as a campaign base and as a demonstration centre for campaign purpose in 2017 but the plaintiff is now abusing the licence. The view the court takes is that the plaintiff's developments can be quantified and he can be indemnified in form of damages in the event that his claim succeeds.
19. The court has reflected on the balance of convenience. The balance of convenience does not favour uprooting the 1st defendant from the suit land. The balance of convenience only favours preservation of the title to the land and the land register, as they exist now, pending the hearing and disposal of this suit. Costs of the application will be in the cause.
20. Consequently, the application dated 7/5/2025 is disposed on the basis of the balance of convenience in the following terms:
 - a. Pending the hearing and determination of this suit, no dealings shall be registered in the land register relating to land parcel number Nkuene/Upper-Mikumbune/1108. Unless extended by the court, this order shall lapse after expiry of 12 months from today.
 - b. Other limbs of the injunctive reliefs that were sought by the plaintiff against the defendants are rejected/declined.
 - c. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 9TH DAY OF OCTOBER, 2025.

B M EBOSO [MR]

ELC JUDGE

