



**Mulongo v Wanjala (Environmental and Land Originating Summons
E020 of 2025) [2025] KEELC 6936 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6936 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E020 OF 2025
A NYUKURI, J
OCTOBER 8, 2025**

BETWEEN

CHARLES KUTOYI MULONGO APPLICANT

AND

PATRICK MUTENYO WANJALA RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion dated 28th April, 2025 filed by the applicant seeking the following orders:
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and determination of this suit there be an order of temporary injunction prohibiting the respondent or his agents from selling, transferring, leasing and from interfering with the applicant's peaceful occupation, use, stay and access of his property/home, being land Reference No. North Wanga/ Khalaba/1801.
 - d. That costs of this application be provided for.
2. The application is premised on the supporting affidavit sworn by Charles Kutoyi Mulongo, the applicant herein. The applicant's case is that he has been in peaceful, vacant and notorious occupation of the parcel of land known as North Wanga/Khalaba/1801 (suit property) measuring one hectare for over 15 years having purchased the same in 2004. That he took possession of the suit property immediately upon purchase from one Fatuma Naliaka Kuta who held herself out as representative of the estate of Ilario Wanyama Wanzala, the then registered owner of the suit property. That the



respondent was “miraculously” registered as owner thereof but resides in Nairobi and has never occupied the suit property. That the applicant has prima facie case with chances of success.

3. He further averred that having purchased the suit property he immediately took possession, built a home thereon and started tilling the said land. That in 2007, the seller Fatuma Naliaka on succeeding her father’s estate, subdivided parcel No. North Wanga/Khalaba/172 into among others, the suit property (parcel No. 1801) and transferred the same to her son Asmani Wabwire Wanyama who held the land in trust for the plaintiff. That the respondent has been threatening him and filing malicious complaints at the police station culminating in the plaintiff being summoned at Mumias Police Station on 25th April 2025, where he was being coerced to surrender the suit property to the respondent. He argued that if an injunction is not granted, he was at risk of being displaced from the suit property by the defendant and that he may suffer irreparable loss. He attached a land sale agreement dated 23rd September 2004; photographs; and a title deed.
4. The application is opposed. Patrick Mutenyo Wanjala filed replying affidavit dated 20th May 2025. He stated that he was the registered proprietor of parcel Nos. North Wanga/Khalaba/1800, 1801, 1802, 1803, 1804 and 1805 having acquired the same lawfully in an adverse possession claim in Kakamega ELC No. 36 of 2018 where the court ordered the Executive Officer to transfer the land to him and titles were issued to him on 4th March 2020.
5. He further stated that the suit property had an extensive history and had been litigated upon since 1970 after his father purchased the land from one Ilario Wanyama Wanzala. He stated that the applicant had never resided on the suit property since 2004 as alleged. That he has been publicly litigating against Fatuma Naliaka Kuta for over sixteen years since 2007. That in Kakamega ELC No. 36 of 2018, the court held that Fatuma Naliaka Kuta lacked capacity to sell any of the properties stated above including the suit property and found that titles held by Fatuma Naliaka and her family had been extinguished.
6. He stated that he is a doctor by profession working in Nairobi but that his family is settled on the said properties. That he is a sugarcane farmer contracted to Mumias Sugar Co. Ltd. That recently, the applicant illegally grazed his animals on the suit property and damaged his sugar cane worth Kshs. 342,115/- whereof he made a report at Mumias Police Station and the applicant was summoned for interrogation on 24th April 2025. That the applicant and his family reached out to him to settle the matter out of court promising not to damage his crops again. That out of empathy, he withdrew the case against the applicant but warned him not to repeat, but that the applicant continues with his illegal grazing in his farm which led to him being charged in Mumias Criminal Case No. E415 of 2025.
7. He denied making threats or malicious complaints against the applicant. He argued that an injunction cannot be issued against a registered proprietor of land who is in occupation, possession and use. That the applicant has not demonstrated a prima facie case with a likelihood of success. That the applicant was aware of the respondent’s suit against Fatuma Naliaka and his allegation that the respondent was miraculously registered as owner of the suit property is aimed at misleading the court.
8. Further that when the respondent served the applicant with eviction notice on 21st July 2022, the applicant filed a claim of adverse possession being Mumias ELCOS No. E052 of 2022 but that the same was withdrawn for want of jurisdiction. He attached title deeds; search certificate; cane farming contract dated 28th January 2008, Citation Case No. 6 of 2006 against Fatuma Naliaka and two others; a decision of the Land Dispute Tribunal Case No. 59 of 2004; amended originating summons and proceedings in Kakamega HCC No. 16 of 2007; Judgment in Kakamega ELC No. 36 of 2018 dated 14th May 2019, transfer instruments and originating summons in Mumias ELC OS 59 of 2022, charge sheet in Mumias Criminal Case No. 415 of 2025; photographs of grazing cattle.



9. Parties filed written submissions in support of their respective positions. On record are submissions filed by parties, which this court has duly considered.

Analysis and determination.

10. The court has carefully considered the application, supporting affidavit, annexures thereto as well as the replying affidavit and annexures thereto together with submissions. The only issue that arises for the court's determination is whether the applicant has met the threshold for grant of temporary injunction.
11. Order 40 Rule 1 of the Civil Procedure Rules provides for the power of the court to grant temporary injunction where the applicant demonstrates that the subject matter of the suit is at risk of waste, damage, alienation, disposal or sale in execution of a decree; and that if an injunction is not granted, there would likely be a delay or obstruction in the execution of any decree that may eventually be passed in favour of the plaintiff.
12. To obtain a temporary injunction, it is trite that an applicant must demonstrate that they have a prima facie case with chances of success; that if the injunction is not granted, they stand to suffer irreparable loss that may not be atoned in damages and where the court is in doubt, it ought to decide on a balance of convenience. (See *Giella v Cassman Brown* [1973] EA 158).
13. In the case of *American Cyanamid Co vs. Ethicon Limited* 1975 AAER 504, the court stated elements to be satisfied before grant of a temporary injunction as follows;
- a. There must be a serious/fair issue to be tried;
 - b. Damages shall not be an adequate remedy
 - c. The balance of convenience lies in favour of granting or refusing the application.
14. A prima facie case was described in the case of *Mrao Ltd v First American Bank of Kenya and 2 Others* (2003) KLR as follows;
- “A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
15. The notion of irreparable injury seeks to protect the prima facie case established by the applicant from being rendered nugatory, hence there must be a prima facie case, before the existence of an irreparable injury. To show that the applicant shall suffer irreparable injury, they ought to demonstrate that the injury likely to be suffered cannot be adequately compensated by costs. In the case of *Pius Kipchirchir Kogo Vs. Frank Kimeli Tenai* [2018] e KLR, the court sated as follows;
- “Irreparable injury means that the injury must be one that cannot be adequately 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.”
16. In the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (supra), the court held that for the balance of convenience to tilt in favour of the applicant, they must show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it.



17. In the instant case, the respondent is the registered proprietor of the suit property. Title is protected under sections 24, 25 and 26 of the [Land Registration Act](#) which provide as follows;

“Interest conferred by registration.

24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25. Rights of a proprietor.

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

26. Certificate of title to be held as conclusive evidence of proprietorship.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or



(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

18. Essentially, a registered proprietor of land has absolute and indefeasible ownership and rights over the land without interference by third parties. Those rights cannot be interfered with, halted or suspended unless there is lawful justification.
19. Registered land is subject to overriding interests, that may not be noted in the register. Section 28 (h) and (j) of the *Land Registration Act* provides for overriding interests to include rights acquired or in the process of being acquired by virtue of any written law relating to the limitation of actions or by prescription and any other rights provided under any written law.
20. Thus, prescriptive rights created under the *Limitation of Actions Act* including claims of adverse possession are overriding interests which registered land is subject to. Therefore, an applicant seeking to obtain an injunction in regard to land registered in the name of another person on the basis that they have a claim of adverse possession over the disputed land, they bear the obligation to establish a prima facie case of adverse possession with chances of success. They ought to also demonstrate that they stand to suffer irreparable injury if an injunction is not issued; and that the balance of convenience tilts in favour of granting the injunction.
21. To demonstrate a prima facie case of adverse possession the applicant’s occupation of the suit property for a period of 12 years ought to be apparent.
22. Sections 7 and 38 of the *Limitation of Actions Act* provide for the period when an owner’s title is deemed extinguished and what a trespasser for a period of 12 years ought to do to claim land on the basis of adverse possession. The said provisions provide as follows;
 7. Actions to recover land

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
 38. Registration of title to land or easement acquired under Act
 1. Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.
23. In the instant case, the respondent is the registered proprietor of the suit property. It is not disputed that he obtained registration through a suit being Kakamega ELC Case No. 36 of 2018 in a judgment delivered on 14th May 2019 where the court held that the defendant herein had acquired parcel Nos. North Wanga/ Khalaba/1800, 1801, 1802, 1803, 1804 and 1805 previously comprised in title No. North Wanga/ Khalaba/172 measuring a total of 5.93 hectares, by adverse possession. In the said suit, the court further found that the defendants being administrators of Ilario Wanzala Wanjala alias Wanyama Wanzala hold the titles to the respective parcels of land in trust for the respondent herein. The court also found that the title of the late Ilario Wanyama Wanzal alias Wanyam Wanjala and that of the respondents’ got extinguished on the expiry of 12 years since the respondent herein began occupying



the land in the 1970s. The defendant in that suit was ordered to transfer the six titles to the respondent herein and in default the Deputy Registrar of the court was authorized to effect the transfer.

24. Therefore, the question of adverse, open, exclusive, and uninterrupted occupation of the suit property was determined on merit and with finality in favour of the defendant herein vide the Judgment dated 14th May 2019 made in Kakamega ELC No. 36 of 2018. This court already having found that the party who has been in adverse possession of the suit property is the respondent herein and the titles thereto having been registered in the name of the respondent on 5th March 2022, it is clear that the period from the time the suit property was pronounced by court as belonging to the respondent herein and the registration thereof up to 2025 when this suit was filed, is not 12 years and therefore there is no prima facie demonstration of the limitation period prescribed in the Law of Limitations Act.
25. In the premises, the applicant has failed to establish a prima facie case with any likelihood of success. In the absence of a prima facie case, whether or not there is irreparable injury and where the balance of convenience tilts is immaterial, because irreparable injury can only be anchored on a prima facie case.
26. Ultimately, I find no merit in the application dated 28th April 2025 which I hereby dismiss with costs to the respondent.
27. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY/OPEN COURT THIS 8TH DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Ms Obware for the plaintiff/applicant

Ms Chesire for the defendant/respondent

Court Assistant- Delphine

