



**Nuhu & another v Kamau (Legal Representative of the Estate of Elizabeth Nyambura - Deceased)
((The Legal Representative of the Estate of Elizabeth Nyambura - Deceased)) (Environmental and
Land Originating Summons E001 of 2024) [2025] KEELC 6763 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6763 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2024
JM ONYANGO, J
OCTOBER 7, 2025**

BETWEEN

SAMSON GITAU NUHU 1ST PLAINTIFF

ELIZABETH WANJIRU MBURU 2ND PLAINTIFF

AND

JOHNSON KAMAU DEFENDANT

**(THE LEGAL REPRESENTATIVE OF THE ESTATE OF ELIZABETH
NYAMBURA - DECEASED)**

RULING

1. The Plaintiff/Applicants filed a Notice of Motion dated 16th July, 2024 seeking an order of temporary injunction to restrain the Defendant/Respondent, his servants, agents, employees or whomsoever acting on their behalf from subdividing, transferring, selling, taking possession of, leasing, charging, registering under or interfering with land parcel number Limuru/Bibirioni/138 (hereinafter referred to as the suit property) pending the hearing and determination of the suit herein.
2. The grounds upon which the Application is based are contained in the Notice of Motion and the Applicants' Supporting and Further Affidavits sworn by Samson Gitau Nuhu (the 1st Plaintiff/Applicant) on 16th July 2024 and 27th June 2025 respectively. In the said Affidavit, the Applicant averred that his late father, Nuhu Gathu Raingwa, and his uncle, Joshua Mukunu Raingwa (the husband to the late Elizabeth Nyambura), were brothers.
3. It is his position that, in or about 1957 the two brothers purchased the suit properties. He contends that since Joshua was the eldest, it was agreed that the property be registered in his name to hold in trust for the Applicant's late father. He adds that the further agreement was that upon Joshua's death,



- the land would first be registered in the name of his wife, Elizabeth Nyambura (as she was childless), and she would later transfer it to Nuhu Gathu and his family.
4. He deponed that after Joshua's death, the late Elizabeth indeed transferred the property to her own name. He further stated that in 1994, he settled on the suit land, built his home there, and has lived thereon uninterrupted for over 30 years with his family.
 5. The Applicant recounted that on 15th July 2024, while at home, he encountered a stranger on the property who informed him he was surveying the land in preparation for subdivision scheduled for 18th July 2024. Upon inquiry, he later discovered that the Respondent had concluded Succession Cause No. 4 of 1997 and was in the process of subdividing the land.
 6. He further indicated that the Defendant, who had also been engaged in litigation with the Applicants in the succession cause, obtained from the Kiambu Chief Magistrate's Court a copy of the certificate of confirmation of grant and the order issued on 21st May 2024.
 7. The 1st Applicant is apprehensive that the Respondent might proceed to transfer the property from the Estate of the late Elizabeth Nyambura while this suit is pending. He stresses that he and his family, who have lived on the land for over three decades, have no other place to go. He also points out that Elizabeth Nyambura(deceased), the registered owner, passed away in 1996, yet he has continued to live on the land without disturbance to date.
 8. He has annexed a copy of the title of L.R No. Limuru/Bibirioni/138 and copy of the green card, photographs of the Applicant's house on the suit property, a copy of the certificate of confirmation and an order given on 21st May 2024.
 9. In the Further Affidavit, he contends that he has never been involved in any legal proceedings with the Respondent concerning the suit property. He faults the Respondent for failing to provide proof to support his allegation that he only took possession of the suit property after the death of Elizabeth Nyambura.
 10. He further contends that although the succession case relating to the Estate of Elizabeth Nyambura was concluded in 2009, he continued to occupy the land without interruption, and he was never a party to those proceedings. He adds that both he and the 2nd Applicant have enjoyed uninterrupted possession of the property even after the Respondent became Administrator of the Estate of Elizabeth Nyambura.
 11. The Application is resisted by the Respondent through the Replying Affidavit sworn on 12th May 2025. He asserts that the Application and the Affidavit are unmeritorious, misguided, and full of contradictions, falsehoods, innuendos, lies, malicious propaganda, and misrepresentations aimed at prejudicing the Court against him.
 12. He depones that on 15th November 2009, Justice D.A. Onyancha delivered a judgment declaring that the suit property was registered in the name of Elizabeth Nyambura (deceased) on 9th April 1966 in her own name, and not as a legal representative of her husband, Joshua Mukunu. He further states that the judgment declared the rightful beneficiaries of Elizabeth Nyambura's estate as Johnson Kamau Njuguna, John Kamau Murima, and Joshua Mburu, being the closest relatives under Section 39 of the [*Law of Succession Act*](#).
 13. The Respondent therefore denies the Applicants' claim that the property was held in trust for the 1st Applicant's father. He insists that Elizabeth Nyambura(deceased) had absolute ownership and could deal with the land as she wished. He adds that when one Sarah Wangari Kuria petitioned for a grant



of letters of administration, she only based her claim on being a close relative to Elizabeth Nyambura and not on any alleged agreement to transfer the property to the Applicants' family.

14. He denies that the 1st Applicant has occupied the land as of right. Instead, he argues that the Applicant only began residing there after Elizabeth Nyambura's death and even used a house belonging to one of the beneficiaries. He states that the Applicant's occupation was interrupted when succession proceedings commenced in 1997, thereby stopping time from running in his favor. On that basis, he contends that the Applicant's claim for adverse possession cannot stand.
15. The Respondent further denies that the 1st Applicant was unaware of succession proceedings. He insists that the 1st Applicant was well aware, having been listed as a dependant in Sarah Wangari Kuria's petition. He refers to a judgment delivered on 17th November 2023 by Justices Warsame, M'inoti, and Mativo, which confirms this.
16. He adds that the High Court in Kiambu, through Hon. Nellieanne Ng'ang'a, delivered a ruling on 21st May 2024 confirming the grant and ordering equal distribution of the estate among the beneficiaries. He also notes that the 2nd Applicant is in custody of the original title deed but has refused to surrender it in compliance with Hon. Ng'ang'a's ruling of 5th November 2024.
17. The Respondent therefore contends that this Application is a mere red herring, intended to delay and obstruct the distribution of an Estate that has been pending since 1996. He urges the Court to dismiss the Application with costs.
18. Both parties filed their written submissions.
19. The only issue for determination is whether the Applicants have met the conditions for the grant of a temporary injunction. In order for the court to exercise its discretion in granting injunctive relief, the applicant must meet the conditions set out in the case of *Giella vs Cassman Brown & Company Ltd* 1973 EA 358 which are as follows:

“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”

20. In the case of *Mrao vs First American Bank of Kenya Limited* (2003) eKLR Bosire JA (as he then was) stated as follows:

“A prima facie case is one 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.”

21. The first question I must determine is whether the Applicant has a prima facie case with a probability of success.
22. The Applicants contend that they have been in uninterrupted possession of the suit property for over 30 years and therefore claim ownership by way of adverse possession. They argue that they have no other place to go and that their possession has not been lawfully interrupted by the Respondent or his predecessors. The Respondent, however, relies on prior court determinations particularly the judgment of Justice D.A. Onyancha delivered on 15th November 2009, and a subsequent ruling by Hon. Nellieanne Ng'ang'a delivered on 21st May 2024 to argue that the suit property lawfully belongs to the Estate of the late Elizabeth Nyambura, with distribution already ordered among beneficiaries.



He contends that the Applicants' alleged possession is not adverse since time stopped running upon initiation of succession proceedings in 1997.

23. At this interlocutory stage, this Court is not called upon to conclusively determine whether the Applicants have acquired ownership through adverse possession. What is clear, however, is that they are in actual occupation of the suit property, a fact which is not denied by the Respondent. This occupation, coupled with their plea of possible eviction, is sufficient to raise an arguable case warranting preservation of the subject matter until final determination.
24. As was stated in the case of *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* 2014 eKLR:

“The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.”
25. On the material placed before the court, I am persuaded that the Applicants have established a prima facie case with a probability of success.
26. With regard to irreparable loss, the Applicants have annexed photographs of their homestead and assert that they have resided on the suit land with their family for decades. If the suit property is subdivided, transferred, or otherwise alienated during the pendency of this suit, the Applicants risk displacement, and the substratum of the suit may be lost. Such harm cannot adequately be compensated by damages, particularly where questions of land ownership and homestead occupation are involved.
27. The test for irreparable loss is defined in *Halsbury's Laws of England, Third Edition Volume 21, P.352* as follows:

“Where the court interferes by way of injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds; first that the injury is irreparable and second that it is continuous. By irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter.”
28. This court finds that the actions by the Respondent would lead to the Applicants suffering irreparable loss if the injunctive relief is not granted.
29. Turning to the question of the balance of convenience, the Respondent argues that the estate has been in limbo since 1996 and that further delay prejudices the beneficiaries. However, the balance tilts in favour of maintaining the status quo to avoid rendering the Applicants' claim nugatory should they ultimately succeed. Although it would be desirable to finalize the distribution of the estate, this must be weighed against the need to preserve the suit property until the ownership dispute is conclusively resolved.
30. As a result of the foregoing, I am persuaded that the Applicants have met the threshold for grant of a temporary injunction. Preservation of the property is necessary to enable fair adjudication of the rival claims. Consequently, I find merit in the Application. I grant it and make the following orders:



- a. A temporary injunction is hereby issued restraining the Defendant/Respondent, his servants, agents, employees, or any person acting under his instructions from subdividing, transferring, selling, taking possession of, leasing, charging, registering, or in any way interfering with land parcel number Limuru/Bibirioni/138 pending the hearing and determination of the suit herein.
- b. The costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED THIS 7TH DAY OF OCTOBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Ms Ng'ang'a for the Plaintiffs/Applicants

Mr Onguti for the Defendant/Respondent

Court Assistant: Hinga.

