



Wakula v hege; Kiboi & 7 others (Intended Interested Party) (Enviromental and Land Originating Summons E005 of 2025) [2025] KEELC 6875 (KLR) (13 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6875 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2025**

CK NZILI, J

OCTOBER 13, 2025

BETWEEN

SELINA JEPTEEK WAKULA APPLICANT

AND

DAVID MONJIRO CHEGE DEFENDANT

AND

GEOFFREY KAPCHANGA KIBOI INTENDED INTERESTED PARTY

WILLIAM RUTO KIPLAGAT INTENDED INTERESTED PARTY

KORIR PHILIP SANGA INTENDED INTERESTED PARTY

MARY JEMAIYO INTENDED INTERESTED PARTY

MICHAEL WANJALA TINDI INTENDED INTERESTED PARTY

PETER KIPTOO NDIEMA INTENDED INTERESTED PARTY

JOSEPH KIPYEGO KIPROP INTENDED INTERESTED PARTY

ROBERT KIPSIGEI MARITIM INTENDED INTERESTED PARTY

RULING

1. This ruling relates to an application dated 28/5/2025, a preliminary objection dated 13/5/2025, and the application dated 2/7/2025.
2. The primary suit was commenced through an amended originating summons dated 27/5/2025. It seeks to have the applicant declared the owner of Title No. Cherangany/Kapcherop/441, registered in the name of Joseph Chege Kimani, the husband of Mary Monjoro Chege, the respondent, by virtue of adverse possession.



3. The respondent filed a replying affidavit sworn on 12/5/2025, together with a preliminary objection. The preliminary objection is that she lacks locus standi to defend the suit and that the extract of title has not been attached to the application contrary to Order 37 Rule 7(2) of the Civil Procedure Rules, and Section 38 of the *Limitation of Actions Act*.
4. In the application dated 28/5/2025, the court is asked to grant a temporary injunction barring and restraining the respondent from transferring, transmitting, selling, alienating, or in any way dealing with the suit land, pending hearing and determination of the suit. The applicant contends that the respondent is the legal representative of the estate of Joseph Chege Kimani, the registered owner of the land, but has now proceeded to distribute the land to her children, Pauline Nyambura Chege and George Stephenson Kigera, as joint owners.
5. The applicant deposes that she is apprehensive that should the transmission occur into the joint names, it may be disposed of to third parties, hence defeating her claim. The applicant, in her supporting affidavit dated 27/5/2025, has attached a copy of the grant, official search, and a confirmation of grant dated 13/5/2025 as annexures marked STW-1A, 1B, and 2, respectively.
6. In the notice of motion dated 2/7/2025, the court is asked to join Geoffrey Kapchanga Kiboi, William Ruto Kipkangat, Korir Philip Sang, Mary Jemaiyo, Michael Ndiema, Joseph Kipyego Kiprop, and Robert Kipsigoi Maritim as interested parties in this suit.
7. The reasons as contained on the face of the application and in the supporting affidavit of Geoffrey Kipchanga Kiboi and Robert Maritim, William Kiplagat, sworn on 2/7/2025, who are that the intended interested parties as beneficial owners of cumulatively 5 acres out of the suit land that they have lived on for close to 20 years, to which substantial developments have been made. The proposed interested parties, therefore, term the claim by the applicant for the entire land as misconceived. The deponent attached copies of the sale agreement and a photo as annexures marked GKK-1 and 2, RM-1 and 2, WK-1, respectively.
8. When the matter came for interpartes on 24/6/2025, learned counsel Mr. Gemenet for the primary application, told the court that he was not opposed to the application for joinder of parties, and was relying on the written submissions dated 24/6/2025 in support of the application for temporary injunction. He also said that he was opposed to the preliminary objection. Miss Lichuma, for the intended parties, told the court that the intended interested parties were not opposed to the application dated 28/5/2025. The court outrightly dismissed the preliminary objection dated 13/5/2025, since it was not a pure point of law. There is already an amended originating summons that clearly introduces the respondent as a legal representative of the estate of Joseph Kimani Chege.
9. Therefore, the preliminary objection that the defendant lacks the capacity to defend the suit is not only mischievous but also misconceived. Coming to whether or not the applicant deserves a temporary order of injunction, a party seeking such orders has to establish a prima facie case, show that he stands to suffer irreparable loss and damage in the absence of an injunction, and lastly, that the balance of convenience tilts in favour of granting the said orders.
10. A prima facie case was defined in *Mrao Ltd -vs- First American Bank of (K) Ltd & Others* [2003] KLR 125, as more than an arguable case. The court held that a party must show an infringement of a right and the probability of success of their case at the trial. Irreparable damage, as per *Nguruman Ltd -vs- Jan Bonde Nielsen & Others* [2014] KECA 606 [KLR], refers to that which cannot be quantified in monetary terms. Balance of convenience is established where, what the applicant stands to suffer, if an injunction is granted and the case does not succeed, is more than what the respondent would



suffer if the injunction is granted, and the suit ultimately is dismissed. See Frank Kimeli Tenai -vs- Pius Kipchirchir Kogo [2018] eKLR,

11. In establishing whether or not an injunction is merited, the court does not conduct a mini-trial, but sees to it based on the material before the court that there is a need to preserve the status quo pending hearing and determination of the suit.
12. The applicant deposes that she has been on the suit land since 1968 without the consent of the registered owner. She says that she has lived, ploughed, reared cattle, and planted crops on the land all this time with her family, without interruption or eviction from the same by the true owner. She has attached a copy of a photo showing the said developments.
13. The official search certificate, attached as annexure WNW-1, shows that the parcel of land is approximately 2.6 Ha. The applicant does not state the size that she seeks to be declared the owner; no sketch map or valuation report has been attached to show the exact size that the applicant seeks to be declared as the owner by virtue of adverse possession. I say so in view of the affidavits in support by the intended interested parties, who also claim possession of a portion measuring 5 acres out of the suit land.
14. Parties are bound by their pleadings. It is not for the court to assume the facts. The burden is on the applicant to prove her right to possession by specifying the size and the locality of the occupied portion out of the suit land.
15. The three hurdles for a temporary injunction have to be established logically and sequentially.
16. The applicant seeks orders to stop the respondent from enjoying land rights which have crystallized since her late husband, now the owner, and which she seeks to transmit to the beneficiaries. The beneficiaries are not parties to this suit. I find no prima facie case established. Once the first step is not met, the court cannot lip flip and consider the rest. The application is dismissed with costs.
17. On joinder of parties, the intended parties must demonstrate a stake in the matter. See Francis Muruatetu & Others -vs- the Republic SC Petition No. 15 & 16 (Consolidated) of 2015 . The applicants have displayed copies of sale agreements and photos to show that they have a protectable right to the suit land, which is likely to be dealt with by the court in their absence. The prejudice likely to be suffered if they are not joined is demonstrable and apparent. Therefore, I find the intended parties as necessary parties to the suit, who should join it for the court to completely and effectually determine all the issues. The application dated 2/7/2025 is hereby allowed. Cost shall be in the cause. Status quo on the land to be maintained till the matter is heard and determined.
18. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 13TH DAY OF OCTOBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant – Dennis

Gemenet for the applicant present

No appearance for the respondents

Serebe for the Interested parties present

