



REPUBLIC OF KENYA



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**Keter v Rotich (Environment and Land Case E017 of 2024)
[2025] KEELC 5681 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5681 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE E017 OF 2024**

**LA OMOLLO, J
JULY 31, 2025**

BETWEEN

PATRICK KIPKOECH KETER PLAINTIFF

AND

JOSEPH KIPKEMOI ROTICH DEFENDANT

RULING

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 29th October, 2024. The application is expressed to be brought under Order 51 Rule 1 & Order 40 Rules 1 & 2 of the Civil Procedure Rules and Sections 3A & 63(E) of the *Civil Procedure Act*.
2. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit, this Honourable Court be pleased to issue interim orders of injunction restraining the Respondent/Defendant herein either by himself, his agents, servants and/or any person claiming under the Respondent/Defendant from trespassing onto, using, occupying or dealing with 7 acres of the suit parcel of land registered as Kericho/Kipkelion/Chepseon Clock 4/564 (sic) in any other manner that is interfering with peaceful occupation of the Applicant/Plaintiff, whatsoever. (Sic)
 - d. Costs of and incidental to this application be provided for.
 - e. Any other or further relief that this Honourable Court may deem just and expedient in the circumstances.



3. The application is based on the grounds on its face and the Supporting Affidavit of one Patrick Kipngetchi Keter sworn on 29th October, 2024.

Factual background.

4. The Plaintiff/Applicant commenced the present proceedings vide the Originating Summons dated 4th September, 2024. The Plaintiff/Applicant seeks the following orders;
 - a. That the Honourable Court do make a declaration that the Applicant has acquired by way of adverse possession a parcel of land measuring 7 acres out of a parcel of land known as Kericho/Kipkelion/Chepseon Block 4/564 registered in the name of the Defendant.
 - b. That this Honourable Court do issue an order do issue (sic) directing the Land Registrar to excise out 7 acres comprising the suit land out of parcel of land known as No. Kericho/Kipkelion/Chepseon Block 4/564 title (sic) for the time being held by the Defendant or by any other persons and to transfer the same to the Plaintiff.
 - c. That this Honourable Court do order that the Plaintiff be registered as the proprietor of 7 acres comprising of the parcel of land known as No. Kericho/Kipkelion/Chepseon Block 4/564 by reason of adverse possession.
 - d. That a permanent injunction do issue restraining the Defendant, by himself, his agents and/or servants from trespassing into, alienating or in any manner interfering with the Plaintiff's use and enjoyment of its (sic) 7 acres portion of land known as No. Kericho/Kipkelion/Chepseon/Block 4/564.
 - e. The costs of the suit.
5. The Defendant/Respondent filed a "Reply to the Plaintiff's Originating Summons (OS) dated 4th September, 2024" sworn on 8th October, 2024. He denies the averments in the Originating Summons and deposes that he is in possession of land parcel No. Kericho/Kipkelion/Chepseon Block 4 (Chepseon) 564.
6. He also deposes that he has always had a boundary dispute issue with the Plaintiff/Applicant.
7. He further deposes that on 6th September, 2024, the Land Registrar and Surveyors visited the suit parcel and fixed the boundaries.
8. It is his deposition that the Plaintiff/Applicant contends that his title deed has errors but he (Plaintiff/Applicant) is guilty of laches as he has never taken any action to seek for rectification.
9. The application under consideration first came up for hearing on 31st October, 2024 when the Court directed that it be served upon the Defendant/Respondent.
10. The application came up for hearing on 20th November, 2024 when the Court gave status quo orders and adjourned the hearing of the application to 22nd January, 2025.
11. On 22nd January, 2025 the hearing of the application was further adjourned to 19th February, 2025. On 19th February, 2025 the Court issued directions that the application be canvassed by way of written submissions.
12. On 17th March, 2025 the matter was mentioned to confirm filing of submissions and reserved for ruling.



The Plaintiff/Applicant's Contention.

13. The Plaintiff/Applicant contends that the Defendant/Respondent is the registered owner of land parcel No. Kericho/Kipkelion/Chepseon Block 4/564. He goes on to state that on 6th September, 2024 the Land Registrar and Surveyor visited among other parcels of land, the suit parcel for the ascertaining and fixing of boundaries.
14. The Plaintiff/Applicant also contends that the said exercise of ascertaining and fixing boundaries was prejudicial to him as he has an interest of adverse possession on the suit parcel.
15. The Plaintiff/Applicant further contends that he is apprehensive that the Defendant/Respondent is likely to evict him from the suit parcel of land.
16. It is the Plaintiff/Applicant's contention that he has peacefully, uninterruptedly and quietly lived on 7 acres of the suit parcel for a period of over thirty years.
17. It is also the Plaintiff/Applicant's contention that for the thirty years he has lived on the suit parcel, the Defendant/Respondent has never raised any questions as to his occupation and use.
18. It is further the Plaintiff/Applicant's contention that the Defendant/Respondent sneaked up on him and maliciously caused the boundaries of the suit parcel to be ascertained and fixed in order to unlawfully deny him the right to enjoy his right to land as an adverse possessor.
19. He contends that he is likely to be evicted from the suit parcel of land and he will therefore suffer irreparable harm and substantial loss if the present application is not heard and determined on priority basis.
20. He also contends that he has a prima facie case with overwhelming chances of success.
21. He ends his deposition by stating that the Defendant/Respondent will not suffer any prejudice if the orders sought are granted.

The Defendant/Respondent's Response to the application.

22. In response to the application, the Defendant/Respondent filed Grounds of Opposition dated 11th February, 2025 and a Replying Affidavit sworn on the same date.
23. The Grounds of Opposition are as follows;
 - a. That as a matter of law, the orders sought therein overstretches the inherent power of this Court as the orders sought shall adversely undermined (sic) the work and mandate reserved for the Hon. Land Registrar pursuant to Sections 18 & 19 of the Land Act, 2012.
 - b. That the suit is incurably defective, frivolous. (sic) and vexatious and is otherwise an abuse of the process of the Court.
 - c. That the instant application does not meet the thresholds and/or satisfy the conditions warranting the honorable (sic) Court to grant Orders sought therein.
24. In the Replying Affidavit, the Defendant/Respondent deposes that the Plaintiff/Applicant's application is an afterthought that is meant to defeat the restoration of the boundary by the Land Registrar and the team of surveyors on 6th September, 2024.
25. He also deposes that there has been a perennial boundary dispute in relation to land parcel No's Kericho/Kipkelion/Chepseon Block 4/5662 (sic), 563, 564, 565 and 566.



26. He further deposes that in April, 2024 he lodged a complaint with the District Land Registrar, Kericho regarding boundary interferences by the Plaintiff/Applicant.
27. It is his deposition that on 17th April, 2024 the Land Registrar issued summons to all the affected parties including the Plaintiff/Applicant herein for the purposes of resolving the said boundary dispute. He adds that the Plaintiff/Applicant did not comply with the said summons.
28. It is also his deposition that he is advised by his advocates on record that the Land Registrar is mandated under Sections 18 and 19 of the Land Registration Act to fix and resolve boundary disputes.
29. It is further his deposition that on 24th May, 2024, the Land Registrar in the company of the government land surveyors visited land parcel No's Kericho/Kipkelion/Chepseon Block 4/562, 563, 564, 565 and 566 for the purposes of establishing and fixing boundaries.
30. He deposes that the Land Registrar and the team of surveyors were chased away by the Plaintiff/Applicant in the company of third parties who were hostile.
31. He also deposes that as a result of the hostility by the Plaintiff/Applicant, the Land Registrar advised him to obtain an order for the provision of security during the exercise.
32. He further deposes that on 23rd July, 2025 he obtained an order directing the OCS in charge of Chepseon Police Station to provide security for a smooth and effective survey exercise.
33. He ends his deposition by stating that the orders sought in the application shall adversely undermine the Land Registrar's mandate pursuant to the provisions of Sections 18 and 19 of the Land Act, 2012.

Issues for determination.

34. The Plaintiff/Applicant filed his submissions on 15th March, 2025 while the Defendant/Respondent filed his submissions on 13th March, 2025.
35. The Plaintiff/Applicant submits on the following issues;
 - a. Whether the Plaintiff/Applicant has established a prima facie case with a probability of success.
 - b. Whether the Plaintiff/Applicant is likely to suffer irreparable injury which cannot be adequately compensated by an award of damages.
 - c. Whether the Court is in doubt and if so, should decide on a balance of convenience. (sic)
 - d. Whether the application should be allowed.
36. On the first issue, the Plaintiff/Applicant relies on Order 40 Rule (1)(b) of the Civil Procedure Rules and reiterates that he has been in occupation of seven acres of the suit parcel of land for a period of over thirty years.
37. He also reiterates that the Land Registrar visited the suit parcel and fixed boundaries and that the Defendant/Respondent is likely to evict him from the portion of the suit parcel he is in occupation of if the orders sought are not granted.
38. The Plaintiff/Applicant submits that he has attached a Chief's letter to his affidavit in support of the application which confirms that he has been in occupation of the suit parcel for a period of over thirty years.
39. The Plaintiff/Applicant relies on the judicial decision of Mrao LTS (sic) v First American Bank of Kenya & 2 Others [2003] KLR 125 and submits that he has proved that he has a prima facie case.



40. With regard to the second issue, the Plaintiff/Applicant submits that he has built his house and made major developments on the suit parcel of land.
41. The Plaintiff/Applicant further submits that he is likely to suffer irreparable loss and damage that cannot be quantified and compensated by way of damages in the event that he is evicted.
42. The Plaintiff/Applicant relies on the judicial decision of Joseph Siro Mosioma v Housing Finance Company of Kenya Limited & 3 Others [2008] eKLR in support of his submissions.
43. On the third issue, the Plaintiff/Applicant reiterates that the Defendant/Respondent is the registered owner of the suit parcel and his actions of taking the Land Registrar and Surveyors to the suit parcel to ascertain boundaries shows that he (Defendant/Respondent) intends to evict him.
44. The Plaintiff/Applicant submits that his application does not set any doubts that is likely to have the Court determine the issues at hand on a balance of convenience. (sic)
45. The Plaintiff/Applicant relies on the judicial decision of Paul Gitonga Wanjau v Gathuthis Tea Factor Company Ltd & 2 Others [2016] eKLR in support of his submissions.
46. On the fourth issue, the Plaintiff/Applicant relies on Order 40 Rule 1 of the Civil Procedure Rules, the judicial decision of Cyanamid Co v Ethicom Limited (1975) A AER 504 and urges the Court to allow his application as prayed.
47. The Plaintiff/Applicant submits that he intends to further ventilate his claim at the hearing of the main suit with regard to his prayer for a permanent injunction.
48. The Defendant/Respondent submits on the issue of whether the Plaintiff/Applicant's application has merit.
49. The Defendant/Respondent relies on the judicial decision of Gabriel Mbui v Mukindia Maranya [1993] eKLR and submits that the issue of adverse possession will be best addressed at the hearing and not at the interim stage.
50. The Defendant/Respondent also submits that the issue of whether or not the Plaintiff/Applicant has been in possession of the suit parcel for a period of over twelve years requires evidential proof and it must be subjected to a full trial for it to succeed.
51. The Defendant/Respondent also relies on the judicial decision of Wambugu v Njuguna [1983] KLR 172 and submits that for a party to prove adverse possession, he must prove that the possession was neither by force or stealth or under the license of the owner.
52. The Defendant/Respondent also submits that the possession must be adequate in continuity, publicity and it must show that the possession is adverse to the title owner.
53. The Defendant/Respondent submits that the dispute in the present proceedings is on boundaries which were fixed by the Land Registrar, Kericho on 23rd July, 2025 under Sections 18 and 19 of the [Land Act](#) 2012.
54. It is the Defendant/Respondent's submissions that the application under consideration was filed as an afterthought after the boundary dispute was resolved.
55. It is also the Defendant/Respondent's submissions that the boundary dispute took such a long time to resolve because the Plaintiff/Applicant was so hostile that he had to obtain a Court order in Misc



ELC No. E016 of 2024 which directed the OCS in charge of Chepseon Divisional Police Station to provide adequate security to the Land Registrar to fix the boundaries.

56. The Defendant/Respondent concludes his submissions by reiterating that the adverse possession aspect of the Plaintiff/Applicant's application requires a full trial in order for it to be determined.

Analysis and Determination.

57. I have considered the Plaintiff/Applicant's application, the responses thereto and the rival submissions. It is my view that

the only issue that arises for determination is whether the Plaintiff/Applicant has met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.

58. In the judicial decision of *Giella v. Cassman Brown* [1973] EA 358, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the Court is in doubt it will decide an application on the balance of convenience.”

59. The Plaintiff/Applicant must first establish a prima facie case. A prima facie case was defined in the judicial decision of *Mrao Limited v. First American Bank of Kenya & 2 Others* [2003] eKLR as follows;

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the 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 later.”

60. The Plaintiff/Applicant contends that the Defendant/Respondent is the registered owner of land parcel No. Kericho/Kipkelion/Chepseon Block 4/564.

61. The Plaintiff/Applicant also contends that he is in occupation of seven acres of land parcel No. Kericho/Kipkelion/Chepseon Block 4/564.

62. The Plaintiff/Applicant further contends that he has been in occupation of the said parcel of land for a period of over thirty years.

63. It is the Plaintiff/Applicant's contention that the Defendant/Respondent invited the Land Registrar and Surveyor to visit the suit parcel and ascertain boundaries.

64. It is also the Plaintiff/Applicant's contention that as a result of the said boundary ascertainment exercise, he is apprehensive that the Defendant/Respondent is likely to evict him from the suit parcel.

65. The Plaintiff/Applicant has attached to his affidavit in support of the application a copy of a letter dated 3rd September, 2024 written by the Chief, Chepseon Location.

66. The said letter states that Patrick Kipkoech Keter, the Plaintiff/Applicant is a resident of Chesinende Sub-location Chepseon Location.

67. The letter also states that the Plaintiff/Applicant lives on land parcel No's Chepseon Block 4/563 and 564.



68. The Plaintiff/Applicant has also attached to his affidavit in support of the application a Certificate of Official Search dated 2nd September, 2024 which shows that Joseph Kipkemoi Rotich was registered as the owner of land parcel No. Kericho/Kipkelion/Chepseon Block 4/564 on 28th January, 1992 and was issued with a title deed on 26th January, 1992(sic).
69. In response, the Defendant/Respondent contends that there has been a boundary dispute over land parcel No's Kericho/Kipkelion/Chepseon Block 4/562, 563, 564, 565 and 566 which involves the parties in the present suit.
70. The Defendant/Respondent also contends that sometime in April, 2024 he filed a complaint before the Land Registrar Kericho over boundary interferences by the Plaintiff/Applicant.
71. The Defendant/Respondent further contends that the Land Registrar issued summons on 17th April, 2024 but the Plaintiff/Applicant failed to honor them.
72. It is the Defendant/Respondent's contention that the Land Registrar and Surveyor went to the suit parcel to ascertain the boundaries on 24th May, 2024 but the Plaintiff/Applicant became hostile and chased them away.
73. It is also the Defendant/Respondent's contention that the orders sought in the present application are meant to undermine the Land Registrar's mandate.
74. From the documents attached to the Plaintiff/Applicant's affidavit in support of the application it is evident that the Defendant/Respondent is the registered owner of the suit parcel.
75. It is also evident that the Plaintiff/Applicant is in possession of a portion of the suit parcel.
76. That being the case, it is the view of this Court that the Plaintiff/Applicant has established a prima facie case.
77. The second condition for grant of orders of temporary injunction is that the Plaintiff/Applicant must demonstrate that he will suffer irreparable injury that would not be adequately compensated by way of damages.
78. In *Nguruman Limited v. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself 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.”

79. The judicial decision in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR provides an explanation of what is meant by irreparable injury. It is 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.”

80. The Plaintiff/Applicant contends that he is likely to suffer irreparable harm which cannot be adequately compensated by way of damages if the orders sought are not granted as he has extensively developed the seven acres of the suit parcel that he is in occupation of.
81. The Plaintiff/Applicant also submits that now that the Land Registrar has ascertained the boundaries, the Defendant/Respondent is likely to evict him from the said portion of the suit property.
82. The Defendant/Respondent did not submit on this issue.
83. In the circumstances of this case, it is my view that the Plaintiff/Applicant has demonstrated that he will suffer irreparable damage which cannot be adequately compensated by way of damages if the orders sought are not granted.
84. If after making considerations on the existence of a prima facie case and irreparable injury the Court is still in doubt, then an application for temporary injunction is to be determined on the basis of balance of convenience.
85. The Plaintiff/Applicant has demonstrated that he has a prima facie case and that he is likely to suffer irreparable injury. I will nonetheless consider whether the balance of convenience tilts in his favour.
86. In *Pius Kipchirchir Kogo v Frank Kimeli Tenai (supra)* the Court held as follows;

“The meaning of balance of convenience will favour of the Plaintiff’ is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has to 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” (Emphasis mine)

87. In *Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 others [2016] eKLR* the Court while considering the question of balance of convenience expressed itself thus;

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the Court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance of convenience lies.” (Emphasis mine)



88. In the present application, it is my view that the balance of convenience tilts in favour of the Plaintiff/Applicant. The Plaintiff/Applicant is likely to suffer greater inconvenience compared to the inconvenience likely to be occasioned to the Defendant/Respondent if orders of temporary injunction are not granted. This is premised on the fact that the Plaintiff/Applicant is in occupation and use of a portion of the suit land.

Disposition.

89. Taking the foregoing into consideration, the application dated 29th October, 2024 is allowed in the following terms;

- a. A temporary injunction is hereby issued restraining the Defendant/Respondent, his agents, servants and/or any person claiming through him from trespassing onto, using, occupying or dealing with the seven-acre portion of land parcel No. Kericho/Kipkelion/Chepseon Block 4/564 pending the hearing and determination of this suit.
- b. Costs of the application shall abide the outcome of the suit.

90. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 31ST DAY OF JULY, 2025

L. A. OMOLLO

JUDGE.

In the presence of: -

Miss Chepngetich for the Plaintiff/Applicant.

Mr. GK Yegon for the Defendant/Respondent.

Court clerk. Mr. Joseph Makori.

