



REPUBLIC OF KENYA



Kathyaka & another v Musyoka & another (Environment and Land Case Civil Suit E013 of 2025) [2025] KEELC 7748 (KLR) (11 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7748 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT E013 OF 2025**

AY KOROSS, J

NOVEMBER 11, 2025

BETWEEN

JOSEPH KIIO KATHYAKA 1ST PLAINTIFF

JOSHUA ODERO ARWA 2ND PLAINTIFF

AND

SHADRACK MWAKA MUSYOKA 1ST DEFENDANT

PATRICK MUSYOKA 2ND DEFENDANT

RULING

1. This ruling considers the unopposed notice of motion filed by the plaintiffs dated 7 02 2025 and expressly made under the provisions of Article 40 of *akn ke act 2010 constitution the Constitution* of Kenya, Sections 18, 19, 20, 24, 25, and 26 of the *akn ke act 2012 3 Land Registration Act* (“LRA”), Sections 1A, 1B, and 3A of the *akn ke act 1924 3 Civil Procedure Act* (“CPA”), as well as Orders 40 Rule 1 and 50 Rule 1 of the Civil Procedure Rules (“CPR”) and all other applicable laws. They seek the following reliefs from this court: -
 - a. Spent.
 - b. Spent.
 - c. That an order of permanent injunction do issue to restrain the defendants and or any other third parties by themselves and or their servants and or agents and or employees and or howsoever from either entering upon occupying constructing on or developing or selling, transferring, charging, mortgaging or in any other manner whatsoever interfering with all that portion of land measuring five eight decimal seven three (58.73) hectares or thereabouts situated in Mavoko Municipality in Machakos District of the Republic of Kenya that is to say land reference number 20355 and or in any other manner whatsoever from dealing with and or



interfering with and or remaining on or continuing in occupation of all, pending the hearing and determination of this suit.

- d. That the OCS Syokimau Police Station be directed to ensure the enforcement of the orders granted by this honourable court.
 - e. That the costs of this application be borne by the defendants.
 - f. That the cost of the motion be provided for.
2. The motion is supported by the grounds outlined in the body thereof and the supporting affidavit of the 1st defendant, sworn on the same date. In summary, it is averred that: a) the plaintiffs are the duly registered owners of all that parcel of land known as L.R. number 20355 (“suit property”), situated in the Syokimau Katani area, Mavoko Sub-County, having obtained it through an allotment letter dated 24 02 1998 and a certificate of title subsequently issued to them on 27 05 2021; b) without their consent and permission, the defendants in November 2024 invaded the suit property, started fencing it off, and put up temporary structures thereon; c) despite their requests to vacate, these defendants, along with other third parties, had ignored their plea and continue to construct; finally, d) these actions had interfered with their possession, use, and ownership of the suit property and may lead to immense loss. They also produced photographs showing two tin houses on a parcel of land and a fence.
3. Accordingly, when Ms. Mulwa appeared before this court on 8 05 2025, she submitted orally and urged the court to grant the motion as sought. Consequently, upon reviewing the motion, its grounds, affidavit, and annexures, the only issue that arises is whether the relief of permanent injunction is available to the plaintiffs at this stage of the proceedings.
4. On matters of law, the plaintiff’s motion is filed in accordance with Order 40, Rule 1 of the Civil Procedure Rules (CPR), which governs this court’s handling of applications of this nature. This statutory provision states: -

“Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

5. The principles guiding this court’s exercise of discretion in granting a temporary or permanent injunction are now well established through authoritative pronouncements. The three key requirements are that the applicant, in this case the plaintiff, must: (a) establish a prima facie case; (b) prove that irreparable harm will occur if the injunction is not granted; and (c) resolve any doubts by showing that the balance of convenience favours it. See *Giella v. Cassman Brown & Co. Ltd* [1973] EA



358, reaffirmed in the Court of Appeal decision *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR). In this case, the court stated:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to; (a) establish his case only at a prima facie level, (b) demonstrate irreparable injury if a temporary injunction is not granted, and (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”

6. In this case, the plaintiffs have not sought orders of temporary injunctions that are usually granted by the courts to preserve or maintain the status quo of the suit property pending the resolution of the main issue before the court. Instead, they are seeking permanent injunctive orders at an interlocutory stage, which is not permissible at this point in the proceedings, as such orders are typically granted after a full trial on the merits and serve to permanently prohibit a party from performing a specific act. In arriving at this, this court adopts the holding of the persuasive decision of *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] KEHC 5027 (KLR) that stated: -

“8. It is apparent from the pleadings that the Respondent was seeking a permanent injunction against disconnection of his electricity by the Appellant. A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.

9. A permanent injunction is different from a temporary interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.”

7. Accordingly, this court finds that the relief of permanent is not available to the plaintiffs at this stage in the proceedings. Nevertheless, in the interests of justice and bearing in mind that the plaintiffs have submitted a copy of a certificate of title which allegedly reflects that it is the registered owner of the suit property, and has presented some photographs which reportedly show that there are invaders allegedly in occupation, it is the considered opinion of this court that there is a need to protect the substratum of the suit property. Hence, this court finds that the appropriate order that suffices in the circumstances of this case is the maintenance of the status quo.

8. Moreover, it must be mentioned that this is a civil matter and in the absence of extremely special circumstances, it is inappropriate for a civil litigant to seek assistance from the police at an interlocutory stage since any default of the orders of this court can adequately be handled under the *akn ke act 1924 3 Civil Procedure Act* and its Rules. As this court concludes, it is also worth noting that the plaintiffs' plaint, dated the same date, also seeks similar substantive orders of permanent injunctive “pending the hearing and determination of this suit,” and the plaintiffs likely made an error in seeking these orders prematurely in the current motion. As for the plaint, liberty applies to them. In the end and for the findings and reasons stated above, the court hereby issues the following final orders: -



- a. Pending the hearing and determination of this suit, an order of status quo that is prevailing on Land Reference Number 20355 situated in Mavoko Municipality in Machakos District, shall be maintained.
- b. Status quo means that from the date of issuance of this ruling, there shall be no further constructions, fencing, interference or development of Land Reference Number 20355 situated in Mavoko Municipality in Machakos District by the defendants, their proxies, agents, servants, employees and or any other person acting on their behalf.
- c. Costs shall be in the cause.
- d. A mention date shall be issued for purposes of pre-trial directions.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 11TH DAY OF NOVEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

11.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

Miss Mulwa for plaintiff applicant

N a for respondent

