



**Okungi v Adingo (Sued as the Administrator of the Estate of the
Late Kiptarus Arap Arusei - Deceased) (Environment and Land Case
E023 of 2023) [2025] KEELC 7795 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7795 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAPSABET

ENVIRONMENT AND LAND CASE E023 OF 2023

GMA ONGONDO, J

NOVEMBER 12, 2025

**IN THE MATTER OF SECTIONS 7,17,37 AND 38 OF THE LIMITATION OF ACTIONS ACT,
CHAPTER 22, LAWS OF KENYA**

AND

IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF 2012

**AND IN THE MATTER OF APPLICATION FOR ACQUISITION OF TITLE BY RIGHT
OF ADVERSE POSSESSION ON LAND PARCEL NUMBER NANDI/SEREM/271**

BETWEEN

ELIKAH MBONE OKUNGI APPLICANT

AND

**BATSON MUDAHSI ADINGO (SUED AS THE ADMINISTRATOR
OF THE ESTATE OF THE LATE KIPTARUS ARAP ARUSEI -
DECEASED) RESPONDENT**

RULING

1. By a Notice of Motion application dated 20th August 2025 the applicant who is the Respondent in the suit through D.E.K Matete and Company Advocates and currently represented by Ochieng Ndolo and Company Advocates further to the Notice of Change of Advocates dated 17th September 2025, is seeking the following orders;
 - a) That, this Honourable Court be pleased to direct the Respondent to open the locked and or closed road leading to the Applicants' homestead on land parcel No. Nandi/Serem/271, the suit land herein.



- b) That, this Honourable Court be pleased to grant an order directing Officer Commanding Section Kobujoi Police Station to provide escort and remove illegal structures placed on the road leading to the Applicant's homestead on the suit land.
 - c) That, costs of this application be awarded to the Applicant.
2. The basis of the application is the Applicant's supporting affidavit of thirteen paragraphs sworn on even date and the accompanying copies of documents including the applicant's National Identity card and photostat of path closed (BMA-1a to 3) annexed thereto alongside the grounds, inter alia;
 - a) That, the Applicant is the registered owner of the suit land and that he currently stays on it.
 - b) The, Respondent blocked an access road leading to the Applicant's home by erecting a barrier fence on a road/path leading to the Applicant's homestead knowing very well that there is still a matter pending determination before the Honourable Court.
 - c) That, the Respondent instructed her son William Mudoga who sent goons under his instructions to fence road/path leading to the applicant's residential home after being advised that the Honourable court might sent representatives to visit the site being an originating summons.
3. By a replying affidavit of Forty-Two paragraphs sworn on 2nd October 2025 with copies of the documents marked 'EMO-1' to "EMO-14" annexed thereto, the Respondent who is the Applicant in the suit through AK Advocates LLP, opposed the application in entirety and sought dismissal of the same. She averred in part that from the onset, she at all times, been in occupation and possession of the portion of land measuring 1 acre out of the suit land measuring approximately 3 acres previously registered in the name of the deceased, Kiptarus Arap Arusei having settled on the land in the year 2001 following the purchase thereof. That her son had purchased the said piece of land from Jairo Mavisi Mamesi who had earlier bought the land from the original owner Kiptarus Arap Arusei in 1974 as shown by a copy of the sale agreement thereto marked "EMO-2" annexed to her affidavit. That upon getting into occupation of a definite portion of land measuring one acre from the suit land measuring approximately three acres, she had built semi-permanent structure on the land where she lives on with her family as revealed in is a copy of photographs of the semi-permanent structure she had erected on the land marked "EMO-3" and annexed to the affidavit. That, the Applicant has never had any access road passing on her definite portion of land measuring one acre of the suit land measuring approximately 3 acres which she has been in possession of from the year 2001 to date.
4. The Respondent further averred that the Applicant has an access road but not on her portion of the suit land leading to his home, has used it for decades, and continues to use the same as discerned in copies of photographs marked 'EMO-14' annexed to the replying affidavit. That the Applicant has not established any case against her warranting the grant of the orders sought in the application at the interlocutory stage which would pre-empt the determination of the issues in dispute.
5. The Applicant's supplementary affidavit of twelve paragraphs sworn on 15th October 2025, is further support of the application. He averred in part that the Respondent landlocked his home and he is forced to trespass into his neighbour's parcel of land to reach the main road. That the orders sought in the application are not meant to evict the Respondent who closed the access road and further referred to Kapsabet HCCA No. 10 of 2021 and Kapsabet CMC Environment and Land case No. E055 of 2023 on the subject matter.
6. The application was heard by way of written submissions further to the orders of the Court given on 22nd September 2025 pursuant to Order 51 Rule 16 of the Civil Procedure Rules 2010.



7. In the submissions dated 13th October 2025, Learned Counsel for the Applicant gave an introduction and brief history of the matter including the application where the applicant is the Respondent in the main suit and service upon the Respondent in the application, Counsel identified issues inclusive of whether the application is unopposed and whether the Court can grant the reliefs therein. In analyzing the issues, Counsel referred to the service of the application, the response thereto and the timelines set by the Court thereof relying on Sections 3 and 19 (a) of the *Environment and Land Court Act* 2015 (2011).
8. Further, Counsel made reference to certificate of official search and title deed (BMA-1c) and that under section 24 (a) *Land Registration Act* 2016 (2012) on registration of a person as the proprietor of land, the Applicant is the absolute owner of the suit land. Counsel implored the Court to grant the orders sought in the application with costs as it was precipitated by the illegal acts of closing the access road by the Respondent.
9. By the submissions uploaded in the e-filing platform on 14th October 2025 at 12.19 hours, Learned Counsel for the Respondent/Plaintiff stated in part that the Applicant has not demonstrated that the Plaintiff blocked the access road leading to his premises. That as such, the Applicant has not demonstrated any violation of his right by the Plaintiff to shift the burden to the Plaintiff. That without any proof of violation of the Applicant's right by the Plaintiff, no adverse orders can be made against the Plaintiff on the matter.
10. Further, counsel submitted that the Applicant lodged Kapsabet CM Environment and Land Case No. E055 of 2023 as shown in a copy of the plaint marked 'EMO-6' annexed to the affidavit and there are status quo orders (EMO-7 and 8) subsisting over the suit land in that suit. That whereas the Applicant created what looked like an access road on his own portion of the suit land, the respondent's portion thereof next to the wooden structure does not have an access road as per the photographs marked as 'EMO-12" and "EMO-13' respectively annexed to her affidavit. That therefore, counsel urged the court to find that there is no basis for grant of the orders sought in favour of the applicant. To buttress the submissions, Counsel cited the case of Nguruman Limited-vs-Jan Bonde Nielsen (2014) eKLR and the case of Stek Cosmetics Limited-vs-Family Bank Limited & another (2020) eKLR.
11. Having considered the application, the replying affidavit, the supplementary affidavit, the nature of the suit for adverse possession over the suit land and the rival submissions in entirety, the duty of the Court is to determine whether the orders sought in the application are meritorious.
12. The Applicant prays for the opening of the locked or closed road leading to his homestead on the suit land. In opposing the prayer, the Respondent averred that she has settled one an acre of the suit land where she erected permanent structures.
13. So, I note that freedom of movement and residence as enshrined in Article 39 of *the Constitution* of Kenya 2010. Fundamental rights and freedoms that may not be limited which exclude the said right, are set out under Article 25 of the same Constitution.
14. Ground (c) of the application and paragraph 4 of the Replying Affidavit disclose the respondent's son, William Mudoga who is a party in both Kapsabet CM E & L Case No. E055 of 2023 and Kapsabet ELCLC NO. E024 of 2023. These are parallel suits as noted in the proceedings of 6th June 2024 and 1st July 2024.
15. In the ruling delivered on 19th September 2024, this Court (Mwanyale J) observed that the parties' interests in this suit and Kapsabet ELCLC NO. E024 of 2023, are separate. That therefore, this suit shall proceed to full trial.



16. There is another suit namely Kapsabet CM Environment and Land Case No. E055; Applicant herein -vs- William Mudoga & Henry Aswani Agosa for eviction from the suit land notable at paragraphs 15, 16 and 17 of the Respondent's replying affidavit. By the said Court's ruling delivered on 4th Sept 2025, an application dated 4th October 2024 for stay of the suit was allowed with costs to abide the outcome of the suits pending before this Court.
17. Besides, the alleged locked and or closed road relates to the suit land. Plainly, the Applicant claims ownership by adverse possession as revealed in the originating summons dated 12th October 2023.
18. On that score, granting the said order may pre-empt the determination of the issues in dispute for trial. Further, it is bound to prejudice the parties thus, the essence of fair trial in this suit.
19. Moreover, fair trial of is an unlimited right under Articles 50 (1) as read with Article 25 (c) of *the Constitution* of Kenya 2010; see also James Kanyiita Nderitu & another-vs-Marios Philotas Ghikas & another (2016) eKLR.
20. Clearly, the principal order sought in the application relates to a road or path on the suit land. That issue, among others, need to be ascertained at the trial of the suit without delay. So, the said order cannot be granted at this interlocutory stage of the suit for the ends of justice.
21. Accordingly, the application dated 20th August 2025 is devoid of merit. The same is hereby dismissed with costs in the cause.
22. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 12TH DAY OF NOVEMBER 2025.

HON G M A ONGONDO

JUDGE

In the presence of;

Mr. Ndolo learned Counsel for the Defendant/Applicant

Mr. Oguttu learned Counsel for the Plaintiff/Respondent

Walter, Court Assistant

