



Some & 2 others v Some (Sued as the legal representative of the Estate of Kiplagat Kituit alias Kiplagat Arap Kituit-Deceased) (Environment and Land Originating Motion E001 of 2025) [2025] KEELC 8027 (KLR) (18 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8027 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND ORIGINATING MOTION E001 OF 2025
GMA ONGONDO, J
NOVEMBER 18, 2025
IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22
AND
IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION
PURSUANT TO SECTION 38 OF LIMITATION OF ACTIONS ACT.

BETWEEN

EZEKIEL KIPBWAMBOK SOME 1ST APPLICANT
JAPHET KIRWA 2ND APPLICANT
EDWIN KIPKOSGEI RONO 3RD APPLICANT

AND

DORCAS SOME RESPONDENT
SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIPLAGAT
KITUIT ALIAS KIPLAGAT ARAP KITUIT-DECEASED

RULING

1. By a Notice of Motion dated 12th August 2025, the applicants/plaintiffs through Cheruiyot Melly and Company Advocates, are seeking the following orders;
 - a) That, pending the hearing and determination of this suit, this Honourable Court be pleased to grant an order of interim injunction restraining the Respondent either by herself, agents, servants and/or any other person acting under her instructions entering, causing wanton destruction, sub dividing, causing registration, charging, selling alienating, interfering in any



way and/or evicting the Applicants/Plaintiffs from a parcel of land otherwise known as LR NO. Nandi/EISERO/108 (The suit land), and in particular, portions of the subject land measuring 7.5 (seven decimal five), 5.1. (Five decimal one) acres and 2.0 (Two decimal zero) acres in possession, occupation and in actual use by the 1st, 2nd and 3rd Applicants for a period exceeding 12 years.

- b) That, the OCS Kabiyet Police Station do effect the orders
 - c) Costs of this application be borne by the Respondent
 - d) Such further and/or other orders be made as the Court may deem fit and expedient.
2. The application is premised upon the affidavit of Twenty-Five (25) paragraphs sworn on even date by the 1st Applicant for and on behalf of his co-Applicants and the copies of documents including authority to plead, certificate of official search, green card and photographs (EKS 1 to 6) annexed to the affidavit to the effect that the Respondent intends to alienate and or defeat the Applicants' interests over the suit land. Also, the application is based on ten grounds which include;
- a) That, the Applicants herein have acquired the rights of adverse possession over a portion of the suit land in possession, occupation and in actual use by the 1st, 2nd and 3rd Applicants respectively for a period exceeding 12 years by way of peaceful, open and uninterrupted occupation and/or adverse possession, prescription and the Respondent herein may alienate and/or forcefully evict the Applicants/Plaintiffs from the suit land with a view of defeat the Applicants/Plaintiff's rights and/or or interest acquired.
 - b) That, the Respondent has demonstrated active manifestation of alienating and/or defeating the interests of the Applicants over the suit land and there is real danger of the suit land herein being alienated and/or the Applicants/Plaintiffs being evicted therefrom through forceful means to deprive the same of accrued rights unless the orders herein sought are granted.
 - c) That, the Applicants/Plaintiffs have a prima facie case with an overwhelming chance of success against the Respondent.
3. The Respondent through Kalya and Company Advocates, opposed the application by her replying affidavit of 24 paragraphs sworn on 6th October 2025 and the annexed copies of documents including grant of Letters of Administration, a protest and agreements. She averred in part that she was appointed as administrator of the Estate of Kiplagat Arap Kituit (Deceased) in the said succession cause. That her brother Zachary Lagat sold the suit land to the Applicants without knowledge and authority of family members. That the Applicants started planting maize on some portions of the suit land. That she reported the matter to their village elder who advised her to do succession in respect of the Estate of the Deceased and resolve the dispute with the Applicants.
4. It was the Respondent's assertion that in dealing with the Applicant's protest in the succession cause, the Magistrates' Court found that it had no jurisdiction over the matter. That therefore, the Respondent urged the Court to dismiss the application and the suit with costs for being an abuse of the Court process intended to circumvent the succession proceedings. That the applicants' activities on the suit land are in the form of sporadic cultivation without residence thereon. That the Applicants have no legal or equitable interest in the Estate of the Deceased, capable of being protected by an injunction.
5. The application was heard by written submissions further to Order 51 Rule 16 of the Civil Procedure Rules 2010.



6. By the submissions dated 31st October 2025, learned Counsel for the Applicants referred to the orders sought in the application, the response thereto and stated that from the time the Applicants purchased the suit land, they have continuously and peacefully occupied the suit land for over 12 years. That they have established homes thereon. That they have met the threshold in the case of *Giella vs Cassman Brown & Company Ltd (1973) EA 358* applied in *Nguruman Ltd-vs-Jan Bonde Nielsen & 2 others (2014) eKLR*, *Mrao Ltd-vs-First American Bank of Kenya Ltd & 2 others (2003) eKLR* thus, the application allowed with costs to the Respondents for justice to be seen to be done to the Applicants.
7. In the submissions dated 27th October 2025, it is the stand point of the Respondent's counsel that the application has not met the threshold of a prima facie case in *Giella*, *Mrao* and *Nguruman* cases (supra) regarding the principles governing the grant of interlocutory injunction. That therefore, the application has no merit and it be dismissed with costs to the Respondents.
8. Upon consideration of the application, the response thereto and the rival submissions in entirety, the duty of the Court is to determine whether the application has attained the threshold for grant of the principal order of interim injunction and the orders to grant for the ends of justice herein.
9. On the first issue, I bear in mind that Order 40 of the Civil Procedure Rules 2010 provides for temporary injunctions and interlocutory orders. The principles of injunctions were laid down in the *Giella* case (supra) and were reiterated in the case of *Nguruman Limited* case (supra) thus;

“in an interlocutory injunction application, the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally 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 states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”
10. The Applicant has demonstrated that the Respondent has made attempts to make entries in the register at the Lands Registry with intent to have the suit land transferred or registered in the names of to third parties. Therefore, the character of the suit land may be altered and the instant suit be compromised thereby.
11. Indeed, in order to determine the issue of the title or ownership of the suit land in the main suit, there is need for order of maintenance of status quo to preserve the subject matter until the suit is determined or terminated, the doctrine of *lis pendens*; see *Ogada -vs- Mollin (2009) KLR 620*.
12. In *Black's Law Dictionary 10th Edition* at page 1073, the term '*lis pendens*' means:

“The jurisdictional, power or control acquired by a court over property while a legal action is pending.”
13. It is established law that an injunction is an equitable and discretionary remedy; see *National Bank of Kenya Limited -vs- Shimmers Plaza Limited [2009] eKLR*.
14. Clearly, status quo order rather than an interim injunction in the terms sought is applicable in the instant application; See Section 13 (7)(a) alongside *Ogada* case (both supra) as well as *Naftali Ruthi Kinyua -vs- Patrick Thuita Gachure & another (2015) eKLR*, and *Musa Angira Angira-vs-ICDC (2015) eKLR*.



15. To that end, it is my considered view that the threshold for an interim preservation order under Section 13 (7) of the Environment and Land Court, 2015 (2011), has been attained in the instant application.
16. Accordingly, the application dated 12th August 2025, is hereby substantially merited and allowed in terms of interim preservation order of status quo to prevail over the suit land. In particular, the suit land shall remain registered in the name of the deceased, Kiplagat Kituit and it shall not be sold, charged, transferred, sub-divided or alienated in any manner to parties or any third party pending the hearing and determination of this suit.
17. The costs of this application be in the cause.
18. It is so ordered.

DELIVERED, DATED AND SIGNED AT KAPSABET THIS 18TH DAY OF NOVEMBER 2025.

HON. G.M.A ONG'ONDO

JUDGE

In the presence of;

Mr. Mohammed instructed by Cheruiyot Melly learned Counsel for the Applicants

Ms. Chirchir learned Counsel for the Respondent

Walter, Court Assistant

