



**Adongo v Ogola (Sued as the legal representative of the Estate of the Olero Akumu) (Environmental and Land Originating Summons E041 of 2025) [2025] KEELC 8556 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8556 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E041 OF 2025  
FO NYAGAKA, J  
DECEMBER 3, 2025**

**BETWEEN**

**ERICK OUMA ADONGO ..... PLAINTIFF**

**AND**

**JIM OLUOCH OGOLA (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE OLEROAKUMU) ..... DEFENDANT**

*(On whether the plaintiff/applicant should be granted temporary injunctive orders)*

**RULING**

**The Application**

1. The plaintiff/applicant herein filed a Notice of Motion application dated 19<sup>th</sup> September 2025 under a Certificate of Urgency seeking Orders:
  1. ...Spent
  2. ...Spent
  3. That a temporary injunction be issued against the Defendant by himself, his agents, servants, jointly and severally from entering, cultivating, surveying, transferring, disposing, alienating, erecting any structure, and otherwise interfering with the Plaintiff's peaceful occupation of Land Reference Number South Sakwa Waware/233 measuring approximately 1. 3 Ha. pending hearing and determination of the main suit.
  4. That the Officer in charge of Sony Police Station and the area administration to ensure compliance with the Order accordingly.
  5. That the Costs of this Application be in the cause.



2. The application is premised on several grounds that are stated on the face of the application. In a nutshell, the plaintiff/applicant stated that the defendant/respondent, without any color of right encroached into Land Parcel No. South Sakwa/Waware/233 which parcel of land has been in his exclusive and peaceful possession for a period of twelve (12) years. The applicant deponed that the defendant/respondent is on the verge of evicting his (applicant's) family from the suit land. He stated that the defendant/defendant/respondent is forcefully constructing a house on the suit land with the support of the chief, Central Sakwa Location.
3. The applicant stated that, unless the reliefs sought are granted, he is likely to suffer irreparable loss since the defendant/respondent is on the verge of evicting him and destroying his home.
4. The applicant filed an affidavit sworn by the plaintiff/applicant herein on even date. He deponed that he is an adverse possessor of the suit property. He stated that the land in question was in possession of his grandfather, one Owino Olero who did in 2007, having occupied the land since the year 1963. Upon the death of the said grandfather, the plaintiff/applicant deponed that he immediately took possession of the suit land and maintained that he has been enjoying peaceful occupation of the said land since then.
5. He also deponed that he has planted various trees as well as crops on the suit land and annexed photos of the said trees in annexure marked EOA 2. He stated that the defendant/respondent has never been in occupation of the suit land and added that the defendant/defendant/respondent has encroached into the said land and annexed photographs of the house he claims the defendant/respondent is building in annexure marked EOA 3.
6. He added that the suit property is registered in the name of Olero Akumu, who never occupied the suit property throughout his life and annexed a certified copy of the official search as well as the green card records of the suit property in annexures marked EO1 4a and b. He maintained that he stands to suffer irreparable loss should this court not grant the orders sought in his application.

### **The Response**

7. The Defendant/Respondent filed a Replying Affidavit dated 23<sup>rd</sup> September 2025 and deponed that he has not been appointed as the legal representative of the estate of his deceased grandfather, one Olero Akumu. He also pointed out that the plaintiff/ applicant filed a similar suit against him over the same subject matter, being ELCOS No. 28 of 2028 which was dismissed by this court. He maintained that the court has already pronounced itself in this matter and the only option available to the plaintiff/ applicant is instituting an appeal if he is dissatisfied with the decision of this court.
8. Finally, the defendant/respondent stated that neither the plaintiff/applicant nor Owino Olero has ever been in occupation of the suit property. He added that the plaintiff/applicant has encroached into the suit property and destroyed the boundary thereon.

### **Issues, analysis and determination**

9. The issues for determination that arise in the instant application are whether the applicant's application is merited and who should bear the costs of the application.
10. Order 40 Rule 1 of the Civil Procedure Rules, 2010 empowers courts to grant temporary injunctions and is couched in the following terms:
  1. Where in a 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 order grant of a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation. Sale, removal, or disposition of the property as the courts think fit until the disposal of the suit or until further orders.
  
11. The principles governing grant of injunctions were set out in the celebrated authority of *Giella v Cassman Brown and Co. Ltd* (1973) EA 358 where the court established that the applicant's application must satisfy three conditions, namely:
  - a. Whether the applicant has established a prima facie case
  - b. Whether the he or she would suffer irreparable loss that may not be compensated by damages; and
  - c. That if the court is in doubt, it may rule on a balance of convenience.
  
12. Notably, the Court of Appeal in *Nguruman Limited v Jan Nielsen & 2 others* [2014] KECA 606 (KLR) established the court need not analyze all the limbs of the test where, say, a prima facie case has not been established. The court stated that:
 

If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the defendant/defendant/respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the defendant/defendant/respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between.
  
13. What constitutes a prima facie case was discussed by the court in *Mrao limited v First American Bank of Kenya limited & 2 others* (Civil appeal 39 of 2002) [2003] KECA 175 (KLR) where the court determined that prima facie case in the context of civil cases means "a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."
  
14. In the same *Mrao Limited* decision (*supra*), the court added that prima facie is more than an arguable case and determined that proof of a prima facie case goes beyond the mere raising of issues. The court stated that:
 

But as I earlier endeavored to show, and I cited ample authority for it, a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.



15. The court in the Mrao case (supra) went on to state as follows:

The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. ...All that the court is to see is that on the face of it the person applying for an injunction has a right which has been threatened with violation...The applicant need not establish title, it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it, the applicant's case is more likely than not to ultimately succeed.”

16. Concerning the aspect of irreparable injury, the court in Pius Kipchirchir Kogo vs. Frank Kimeli Tenai (2018) eKLR as defined as hereunder

“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.”

17. This Court has considered the application and the Replying Affidavit filed by the parties as well as the law. It is imperative to appreciate that grant of interlocutory reliefs is at the discretion of the court, and the court should be guided by both the law and evidence when exercising this discretion. This was held by the court in Mrao Limited v First American Bank of Kenya Limited & 2 others (Civil Appeal 39 of 2002) [2003] KECA 175 (KLR).

18. The plaintiff's application is anchored on a claim for adverse possession over Land Parcel Number South Sakwa/Wawere/233 which he claims to have to in peaceful occupation for over twelve (12) years. The defendant /respondent on the other hand maintained that the plaintiff/applicant has never been in possession of the suit property. He deponed that the plaintiff/applicant encroached into the suit land and tampered with the boundary thereon.

19. Faced with the above two conflicting accounts from both parties, this court called in the aid of the area Assistant-Chief for purposes of establishing who actually was and is, currently, in occupation of the suit property herein.

20. The area Assistant Chief testified on oath and stated that he is conversant with the suit property and that the Defendant/Respondent herein is in occupation. He has been planting, among other crops, cassava. He told the court that the plaintiff/applicant has never been in occupation of the said land.

21. It the court's finding that the plaintiff/applicant is not in possession of the suit property. Again, it is not in dispute that the Plaintiff is not the registered owner of the property. Since he is neither the registered owner nor in occupation this court cannot envision how he can be said to have established a prima facie case with a probability of success. It follows that, the plaintiff/applicant, having failed to prove the existence of a prima facie case, the court will not evaluate the remaining limbs established in the Giella v Cassman Brown case (supra). This was the position adopted by the Court of Appeal in Nguruman Limited (supra).



22. Accordingly, this plaintiff's/applicant's application dated 19<sup>th</sup> September 2025 is without merit and prayers 3 and 4 thereof are hereby disallowed. The plaintiff/applicant shall bear the costs of the application
23. The suit shall be mentioned for directions under Order 11 of the CPR on 10<sup>th</sup> February 2026. The parties are directed to file and exchange trial bundles within the next thirty (30) days of this ruling.
24. Orders accordingly

**RULING DATED SIGNED AND DELIVERED ELECTRONICALLY VIA THE TEAMS PLATFORM THIS 3<sup>RD</sup> DAY OF DECEMBER, 2025.**

**HON. DR. IUR NYAGAKA**

**JUDGE**

In the presence o

No appearance for parties though the date was given in Court.

