



Catholoc Diocese of Homabay Registered Trustees v Aganyo (Environment and Land Case E042 of 2025) [2025] KEELC 8567 (KLR) (8 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8567 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND CASE E042 OF 2025
FO NYAGAKA, J
DECEMBER 8, 2025
IN THE MATTER OF THE LIMITATIONS OF ACTIONS ACT CAP
22 LAWS OF KENYA
AND
IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION
PURSUANT TO SECTION 38 OF THE LIMITATION OF ACTIONS
ACT, AND ORDER 37 RULES 7 AND 14 OF THE CIVIL
PROCEDURE RULES
AND
IN THE MATTER OF LAND PARCEL NO. CENTRAL
KASIPUL/KAMUMA/ 934 MEASURING APPROXIMATELY 0.90
HECTARES

BETWEEN

THE CATHOLOC DIOCESE OF HOMABAY REGISTERED TRUSTEES PLAINTIFF

AND

JOSEPH RHOBINS RHEINS AGANYO DEFENDANT

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



RULING

The application

1. The plaintiff/applicant filed a Notice of Motion dated 29th June 2025. It brought it under Certificate of Urgency, seeking ORDERS:
 1. ...Spent
 2. ...Spent
 3. That upon hearing this application inter partes, interim orders of injunction do issue forbidding, barring and prohibiting the respondent, either by himself or through any of his agents, assigns and representatives from threatening and interfering with the plaintiff/applicant's peaceful possession, occupation and use of land parcel Central Kasipul/Kamuma/934 (the suit property), which property the plaintiff/applicant has openly and continuously occupied and used continuously for a period of 18 years now until such a time when the main suit is heard and determined on merits.
 4. That upon hearing of the application inter partes, orders be made for status quo ante to be maintained until such a time as the main suit is heard and determined.
 5. Costs of the application be provided for.
2. The application is premised on several grounds outlined on the face of the application as well as the supporting affidavit of Erick Odhiambo Ochieng. The plaintiff/applicant stated that the suit property belonged to the respondent's father, one Hezekiah Obong'o who is now deceased. He added that upon succession, the respondent transmitted the whole property to himself hence becoming the registered proprietor since the year 2007.
3. The plaintiff/applicant, through the depositions in the supporting affidavit which rehashes the contents of the grounds in support of the application which are the ones I am listing at this stage, is said to have been in open, notorious, continuous and uninterrupted occupation of the suit property since the same was registered in the name of the respondent in the year 2007 and that there have been no attempts to evict the plaintiff/applicant.
4. Further to the above, the plaintiff maintained that the Catholic Church moved the then district officer of the Eastern Division South Nyanza for 5 to 6 acres of land for the Catholic Missions Centre. The plaintiff/applicant maintained that it took possession of the suit land in the year 1974 and built several structures thereon for use by the church and continued with possession thereof, which possession the plaintiff/applicant maintained, has been exclusive and uninterrupted up to date.
5. The applicant further stated that, despite its plea to the respondent to have the succession of the suit property done jointly with the plaintiff/applicant for purposes of transmitting the said suit property to the applicant, the respondent went ahead and had the suit land transmitted to himself.
6. The applicant maintained that time for purposes of claiming the suit land by way of adverse possession begun running on 14th December 2007 when the suit land was registered in the name of the respondent. Moreover, the applicant stated 12 years lapsed on 14th December 2019, which date also marks the time when the plaintiff/applicant acquired proprietary rights over the suit which are still subsisting this day.



7. The applicant also maintained that the respondent has been sending his sons to interfere with the plaintiff's/applicant's occupation of the suit property and prayed that this court orders that status quo ante be maintained so as to safeguard the plaintiff/applicants use and enjoyment of the suit property.
8. The supporting affidavit accompanying the application replicates the contents of the application which need not be reproduced save to add that, the deponent Erick Odhiambo Ochieng deponed that he was the Reverend Father in charge of the department of lands at the Catholic Diocese of Homabay. He deponed that the suit land was purchased from three people, being Mbui Rure, Hezekiah Obong'o and Ila Orure, all of whom are now deceased. He stated that the three land owners were compensated for the land in 1975 by receiving Kshs. 2363,00, Kshs.1953,00 and Ksh. 419.00 respectively for the said parcel of land.
9. The applicant's deposition clarified that the instant suit is not against any deceased persons but against the defendant/ respondent herein, who acquired his father's estate in succession to the exclusion of the Catholic Church that has all along been in occupation.
10. The applicant annexed the following to the affidavit: a copy of certificate of incorporation marked EOO-01; a certificate of official search for the suit property marked EOO-02 (a) and (b); a copy of the application for land vide letter dated 31st October 1974 marked EOO-03; a copy of consent to develop the land dated 5th November 1975 marked EOO-04; a letter dated 15th November 1974 on compensation marked EOO-05 (a) and (b) ; and photographs of the suit property and the applicant's developments thereon marked EOO-06 (a)-(f).
11. The applicant filed a Further Affidavit dated 28th august 2025 and sworn by Erick Odhiambo Ochieng. The gist of the affidavit is that, when the defendant/respondent learnt of the instant suit, his sons and agents begun tormenting the plaintiff/applicant hence causing serious breach of peace. In particular, the Erick Ochieng deponed that on 1st august 2025, the respondent's son, one Alex Aganyo led a group of rowdy youth in fencing the suit property. The plaintiff/applicant annexed photographs of the said fence in annexure marked EOO- 01 (a)-(f).
12. The applicant further deponed that the respondent momentarily stopped the fencing upon the plaintiff/applicant obtaining help from the police. However, this calm did not last for long as the said Alex Aganyo together with a group of rowdy youth returned to the suit property on 14th august 2014 while wielding machetes and used a tractor to plough the suit property.
13. The applicant further deponed that parish members staged a demonstration to express their disappointment over the actions relating to the respondent's agents and that it is this protest that has kept the respondent at bay. However, the plaintiff/applicant deponed that the respondent's son openly threatened to mobilize goons to burn down the church.
14. The applicant stated that the matter is of utmost urgency and prayed that the respondent, his sons and agents be barred from accessing the suit property for purposes of protecting the plaintiff/applicants use and enjoyment of the suit property.

The Response

15. The defendant/respondent filed a replying affidavit dated 22nd August 2025, in response to which, as stated above, the Applicant filed the Further Affidavit. The defendant deposed that he is the registered owner of land parcel Central Kasipul/Kamuma/934 and added that he has been issued with the title deed thereof. He annexed a Certificate of Official Search dated 15th December 2021.



16. Further, he deponed that, by virtue of the aforesaid registration, he is bestowed with the capacity to possess, use and occupy the suit property to the exclusion of the plaintiff/applicants who is a trespasser to the said suit property.
17. He also deponed that the plaintiff/applicant's prayer for a temporary injunction against the respondent is irregular since there is no legal provisions that that allows for the grant of a temporary injunction against a registered proprietor of land.
18. He added that the plaintiff/applicant has not satisfied the conditions set for grant of injunctions in *Giella v Cassman Brown* [1979] and maintained that the plaintiff/applicant has not presented anything before this court to warrant the grant of the orders sought. He also stated that the plaintiff / applicant filed another originating summons dated 16th December 2021 at the Oyugis Law Court and the same was withdrawn. He also added that the plaintiff/applicant did not explain to this court what transpired on the suit property as the parties waited for this court to decide on the transfer of the Originating summons dated 16th December 2021.
19. Lastly, the Respondent deponed that the instant application does not disclose a reasonable cause of action, is incompetent and superfluous and amounts to an abuse of court process. The defendant/ respondent prayed that the application be dismissed with costs as the same is without merits.
20. The Respondent filed a Further Replying Affidavit dated 10th September 2025. He deponed that the further affidavit filed by the plaintiff/applicant should not be considered since the plaintiff /applicant ought to have filed a supplementary affidavit and not a further affidavit. He prays that the further affidavit be expunged from the court record for being absurd and unlawful.
21. The respondent further contented that the plaintiff had not presented to this court, any evidence of fencing on the suit property and/or any rowdy youth. He also deponed that there was no evidence that the police were involve in stopping the conflict as alleged by the plaintiff/applicant. Equally, the defendant applicant also stated that photographs of the tractor does not show that the tractor was either on his land or ploughing.
22. In addition to the foregoing, the defendant/respondent deponed that the issue of demonstrations alleged by the plaintiff/applicant prove that there has never been uninterrupted occupation of the plaintiff/applicant.
23. Finally, the Respondent prayed that the instant application be dismissed with costs.
24. With this extremely contentious clashing factual viewpoints, the court called on an officer of government to whose offices alleged criminal interference on the parcels had been reported for investigation, to shed light on what her office found. Thus, this court had the opportunity of taking the testimony of the officer commanding station (OCS), Oyugis Police Station, one Rudia Boke, on 17th September, 2025 concerning the instant conflict. She testified that she knew the parcel of land in issue, as Central Kasipul/Kamuma/934 (herein known as parcel No. 934). She stated that as at the time of her testimony, the said parcel was occupied by the Catholic Church which was situate adjacent to the Police Station. It was next to a piece of land which previously had no structure on it.
25. She added that the wrangles regarding the occupation of the land started on 16th August, 2025 when a report was made to her office vide Occurrence Book (OB) No. 47. It was made by a Church representative who stated that the church wanted to fence the compound which belonged to it but it was met by hostility from a party who claimed the land. She sent officers to the ground. On arrival the officers found no one since the claimants had left.



26. Then, on another occasion, being on 13th September 2025, her office received another complaint from the church that the small structure which it had put up before on the disputed land was being demolished. She and her officers proceeded to the scene. On reaching they found that the people had finished the demolition and disappeared. Further, they found iron sheets on the ground. They took photographs of the same. The structure was partially demolished. The other part of the land had no structure on it. That portion had been used by the school for a playground for the children for a long time. That part had since been ploughed.
27. On cross examination she admitted that she had not received information that some people were wielding pangas and weapons on the ground. She also stated that she had not been informed that children and teachers had been threatened or scared by the people alleged to be wielding pangas and weapons. She admitted that the church had reported about the interference when it wanted to build a fence but from the week previous to the time of her testimony in Court there was peace on the ground. She added that the church had reported that the land, now ploughed, belonged to it and was a playground until it was cultivated but now the children did not have where to use for play. She added that someone from the other party too had gone to her office to claim the land as theirs.
28. Lastly, the witness added that the church property was adjacent to the one in issue. The said adjacent parcel was the one which was being used as a school playground.

Submissions

29. The application was canvassed by way of written submissions. The applicant did not file its submissions. The defendant/respondent filed his submissions dated 9th September 2025. He argued that the applicant had only presented the history of how they entered the suit property but gave no evidence of their alleged occupation of the said property.
30. The respondent reiterated the test that must be met by the applicant for purposes of being granted the injunctive relief sought and relied on the test established in *Giella v Cassman Brown* [1979]. He maintained that the plaintiff/applicant had not provided any evidence to prove a prima facie case with a possibility of success as well as the evidence that it would suffer irreparable injury should the orders sought not be granted.
31. In conclusion, the respondent submitted that he has been the registered proprietor of the suit property since 14th December 2007 and the applicant has not demonstrated where they have been since the above stated date until they filed their application. He urged this court to dismiss the instant application with costs.

Issues, Analysis and Determination

32. The issues that this court should consider for determination herein are whether the application is merited and who should bear the costs of the application. 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 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 thins fit until the disposal of the suit or until further orders.

33. In *Giella v Cassman Brown and Co. Ltd* (1973) EA 358 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.

34. A prima facie case was defined in the following terms 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 a 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."

35. The court proceed to determine that a prima facie case is more than an arguable case and determined that proof of a prima facie case goes beyond the mere raising of issues and held as hereunder:

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....

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

36. On the question of irreparable injury, the court in *Pius Kipchirchir Kogo vs. Frank Kimeli Tenai* (2018) eKLR held that:

"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."

37. Where the court is not sure of the first two elements of the test in the sequence they appear, it should determine the matter on a balance of convenience by determining the party in whose favor the scales of justice would tilt in favor of granting the injunction,



38. Most importantly, the court need not analyze all the three limbs of the Giella Cassman Brown test where one hurdle has not been passed, say, a prima facie case has not been established by the applicant. In *Nguruman Limited v Jan Nielsen & 2 others* [2014] KECA 606 (KLR) the court of Appeal established as follows:

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.

39. I have considered the application and the responses thereto in totality together with the evidence tendered by the Officer Commanding Station, Oyugis Police Station. I have also analyzed the submissions of the defendant/respondent as well as the applicable law. At this stage, I must add 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 as was held in *Mrao Limited v First American Bank of Kenya Limited & 2 others* (Civil Appeal 39 of 2002) [2003] KECA 175(KLR).

40. As to whether the applicant has established a prima facie case, I note that the instant claim relates to a claim for land on the basis of the doctrine of adverse possession. Contrary to the respondent's contention that the applicant has not provided evidence to show occupation of the suit land for a period of over 12 years, I find that the latter has in deed provided such evidence to the satisfaction of this court that it is in occupation of the land. It provided evidence that parcel of land in contention is and has been in use as a playground of the children who attend the school it established or has been running for a while. What needs to ultimately go for trial is how long and what the nature of the occupation by the Plaintiff has been.

41. The court has also considered the evidence of the OCS Oyugis Police Station who testified that that the plaintiff/applicant has been in occupation of the suit property. The OCS confirmed that indeed that has been ongoing wrangles between the parties and the respondents have destroyed property on the suit land as alleged by the plaintiff/ applicant. On this basis, I find that the applicant has demonstrated that there is prima facie case with a probability of success. I also find that there in need protect the suit property from further damage.

42. Having established that there exists a prima facie case with a possibility of success, I will not belabor much in analyzing the other two elements of the *Giella v Cassman Brown* test. This is because, indeed, from the facts in the supporting affidavit and the evidence of the OCS Oyugis Police Station that the Plaintiff has been using the suit land for school purposes, it in my view, would result to irreparable harm if an injunction is not issued as prayed since the acts of the defendant on the ground, for instance, cultivating the school's playground, would most likely endanger the children who would be playing on uneven and disturbed ground and most likely lead the Ministry of Education to close the school for lack of enough space for running a school as envisioned in the laws of Kenya. This would have serious ramifications affecting the best interest of the child. Even the balance of convenience tilts in favour of the Plaintiff.



43. Accordingly, prayer 3 of the application is hereby granted. To be specific, an injunction hereby issues against the Defendant in terms of prayer 3 of the application to the effect that an injunction hereby issues forbidding, barring and prohibiting the respondent, either by himself or through any of his agents, assigns and representatives from threatening and interfering with the plaintiff/applicant's peaceful possession, occupation and use of land parcel Central Kasipul/Kamuma/934 (the suit property), until such a time when the main suit is heard and determined on merits, but in any event within twelve months of this order. Prayer 4 is equally allowed for purposes of preserving the suit property pending the hearing and determination of the main suit.
44. In terms of Section 27 of the *Civil Procedure Act*, costs follow the event. Thus, the costs of the application shall be borne by the Respondent
45. For reasons of the urgency demonstrated herein, and the fact that this matter had initially been filed in the Oyugis subordinate court which did not have jurisdiction and was subsequently withdrawn and filed herein, the parties are hereby directed to file their trial bundles within the next thirty (30) days, the count being inclusive of the period of holiday festivities as provided for in the Civil Procedure Rules. The matter shall be mentioned on 21st January, 2026 for compliance.
46. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM
THIS 8TH DAY OF DECEMBER, 2025.**

HON. DR. IUR NYAGAKA,

JUDGE

In the presence of,

Court Assistant: Mr. Adongo P.

No appearance for the advocate for the Applicant

Kiprotich for Ochwangi Advocate for the Respondents

