



REPUBLIC OF KENYA



**Kimani v Kweli & another (Environment and Land Case 97 of 2023)  
[2025] KEELC 8608 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8608 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND CASE 97 OF 2023**

**JM KAMAU, J**

**DECEMBER 10, 2025**

**BETWEEN**

**JOSEPH NDICHU KIMANI ..... PLAINTIFF**

**AND**

**JOHN NJORO KWELI ..... 1<sup>ST</sup> DEFENDANT**

**BENEDICTO MURIITHI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the Decree dated the 13/6/2024 the Honourable Mr Justice Y.M.Angima was faced with the claim of:-
  1. An order of permanent Injunction to restrain the Defendants from trespassing onto , remaining upon, or in any manner interfering with the use and occupation of parcel No Nyandarua/ Mawingo Salient/1511.
  2. An order of eviction of the 2<sup>nd</sup> Defendant from parcel No. Nyandarua/Mawingo Salient/1511.
  3. Costs of the suit.
  4. Any other relief the Court may deem fit to grant.
2. He then delivered the following Judgment.
  1. The 1<sup>st</sup> Defendant shall hand vacant possession of title No Nyandarua/Mawingo Salient/1511 to the Plaintiff forthwith.
  2. A permanent injunction is hereby issued to restrain the 1<sup>st</sup> Defendant from trespassing, remaining upon or in any manner interfering with the use and occupation of title No. Nyandarua/Mawingo Salient/1511.



3. The 1<sup>st</sup> Defendant's counterclaim be and is hereby dismissed in its entirety.
  4. The Plaintiff is hereby awarded costs of both the suit and counterclaim, to be borne by the 1<sup>st</sup> Defendant only.
3. After the delivery of the above Judgment, the 1<sup>st</sup> Defendant hereinafter referred to as the Applicant on 8/4/2025 made an Application for the following orders:-
1. Spent.
  2. Pending the inter partes hearing of the Application the Court be pleased to issue interim orders of stay of execution of the Judgment delivered on 13/6/2024 and all consequential orders issued pursuant thereto.
  3. This Court be pleased to vacate, vary and/or set aside its Judgment delivered on 13/6/2025.
  4. This Court be pleased to vacate, vary and/or set aside its orders made on 14/6/2024 closing the 1<sup>st</sup> Defendant's case and dismissing his counterclaim for want of prosecution.
  5. This Court be pleased to reopen the proceedings herein and allow the 1<sup>st</sup> Defendant to prosecute his Defence and counterclaim.
  6. Costs of the Application be provided for.
4. The Application was supported by the Affidavit in support by John Njoro Kweli sworn on 8/4/2025 and on the following other grounds on the face of the Application. That the 1<sup>st</sup> Defendant was never notified of the date fixed for Defence hearing in this matter by his Advocate. He came to learn that the matter had proceeded and his Defence and counterclaim dismissed for want of prosecution when he was served with the Decree on 25/3/2023 and, Failure to attend Court was not deliberate but occasioned by not being notified of the same by his Advocates.
5. He further states that having purchased the suit premises from the Plaintiff he has a good Defence and counterclaim and should therefore be allowed to prosecute the same.
6. He tells the Court that it is in the interest of justice that the Application be allowed and that the Plaintiff is not going to suffer any prejudice as a result. He says in his Affidavit that the knowledge of the Decree came to him on 25/3/2025 when he was served with the Decree dated 20/1/2025 indicating that Judgment was delivered on 13/6/2024 and that his Advocates could not be able to explain to him how he had notified him (the Applicant) of the date of hearing. He depones that had he been notified of the hearing date, he would have attended Court and prosecuted his Defence and Counterclaim.
7. He claims to have co-operated with his previous Advocate to the extent of clearing all the latter's fees and that he is still in occupation of the suit premises which he took possession of in 1995 and had even attained Title by adverse possession by the time the Plaintiff filed this suit in 2017 for over 22 years.
8. In his Replying Affidavit, the Plaintiff/Respondent deponed that the Application is devoid of any merit as the Applicant in his Application is not forthright and candid. He depones that all along the Applicant was represented in Court by Mr. Wahome and Mr. Ojare respectively and that it was the Applicant's obligation to ensure that the suit filed against him was expeditiously prosecuted in Court by making follow-ups .
9. He further depones that the Applicant has never been in occupation of the suit land and such a deposition is misleading to the Court. It was only the 2<sup>nd</sup> Defendant who was in occupation.
10. This suit was filed on 18/4/2017.



11. After the Court was sure that both parties had filed their respective submissions, the following Ruling is delivered.
12. In the first place, I feel that the Applicant shot himself on the foot the moment he deponed that:  

.....That the Court record is clear that I had all along been attending Court even during the days that the matter had been fixed for hearing of the Plaintiff's case.....”
13. Before the 14/2/2024, the last time the case had come up for mention was on 14/2/2024. The last Hearing date was 8/6/2022 when the Plaintiff's case was closed. Thereafter, the case was to be heard (Defence case) on 11/10/2022.
14. Assuming that the 1<sup>st</sup> Defendant attended Court on the aforesaid date, then he must have heard the Court give 21/11/2022 as the next mention date on which date he should have followed up the matter to know the next hearing date or enquire from his Advocate and known that the next Hearing date was 7/3/2023 and then later on 11/5/2023 and subsequently on 19/9/2023 before 6/12/2023. I cannot understand how the Applicant after leaving Court on the 8/6/2022 with a strong Defence and Counterclaim as he says could have waited until 25/3/2025 when he was served with a Decree about 3 years. Equity aids the vigilant and not the indolent.
15. I have also looked at the Pleadings in this case. The Plaintiff prayed for inter alia, an Order of eviction of the 2<sup>nd</sup> Defendant from the land parcel No. Nyandarua/Mawingo Salient/1571 as well as a permanent injunction to restrain the Defendants from trespassing into or remaining into or in any manner interfering with the use of and occupation of the suit parcel.
16. In his Statement of Defence dated 21/9/2017, the 1<sup>st</sup> Defendant claimed that he had bought the suit land from the Plaintiff for Kshs 140,000/=, had paid Kshs 90,000/= and that the balance of Kshs 50,000/= was to be paid on or before 1/12/2002. He further averred that he was in exclusive physical occupation and had been in continuous occupation, without interruption from any person and that he had rightly acquired the suit premises by way of adverse possession. This was to be the 1<sup>st</sup> Defendant's Defence. He does not even say that he had paid the balance of Kshs 50,000/= by 1/8/2002 long before the suit was filed. Therefore, his main Defence was based. Not even in their Amended Statement of Defence and Counterclaim dated 18/12/2018. He claims that he is entitled to 2 Acres to be excised from Nyandarua/Mawingo/1511 in specific performance yet he has not shown that he paid the entire consideration.
17. He then pleads adverse possession. I have said time and again in Judgments in the recent and not too distant past that as soon as the Plaintiff files a suit for the Defendant's eviction or for injunction, trespass or vacant possession against the Defendant, the latter's Counterclaim for Adverse cannot stand. This is due to the fact that as soon as the registered owner steps in Court to assert his claim over the suit land, there is interruption of the quiet possession by the occupier and therefore it extinguishes the “nec claim” and “nec per vim” elements of adverse possession.
18. Accordingly, even if the Applicant were to defend the suit, he is likely not to succeed in the case. However, this is not to say that he loses his day in Court. The main reason as to why the Applicant cannot succeed is because one, it took so long for him to find out what was happening in his case in Court which is unbelievable. It is not to be expected that it can take a person who knows he has a case in Court 3 years to call his Advocate or better still to walk to his office to find out the progress of the case.
19. The upshot of this is that the Applicant's Application dated 8/4/2025 is hereby dismissed with costs.



**JUDGMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 10TH DAY OF  
DECEMBER, 2025.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: Samson

Plaintiff's Counsel: Ms. Bosibori.

Defendant's Counsel: Mr. Kamanga for 1<sup>st</sup> Defendant.

