

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ELCEPOS E001 OF 2025

JOSEPH KISEMBE KIPINTOI.....
PLAINTIFF

VERSUS

SIMON MOSET OLE TARE.....1ST
DEFENDANT

SIMON OLE KONYOKIE.....2ND
DEFENDANT

RULING

1. Two applications, the one dated 11.07.2025 by the plaintiff and the other dated 14.08.2025 by the Defendant both seeking injunctive orders against each other are subject of this composite Ruling.
2. In his application dated 11.07.2025 the Plaintiff/Applicant seeks temporary injunctive orders, against the 1st and 2nd Respondents, by herself her servants, agents or employees or anyone claiming under her from entering, encroaching on, obstructing, trespassing on, or transferring, charging, selling, alienating or in any other way whatsoever from interfering, with the plaintiff's quiet enjoyment and land reference number Transmara/Nkararo/958 and Transmara/Nkararo/855 or any portion thereof pending the hearing and determination of this suit.
3. In support of the first application, the grounds are inter alia that; -
 - (a) The Applicant has lodged a claim of adverse possession over land reference No. Transmara/Nkararo/958 and Transmara/Nkararo/855, having resided thereon with other permanent buildings.
 - (b) The said occupation has been over 12 years, being uninterrupted and without permission, while the Respondents acquired title in

2023 and 2021 in total disregard to the plaintiff's actual possession and occupation of the land.

(c) The Respondents are threatening to evict the applicant and his family from the said land and the applicant will be rendered homeless and cause irreparable harm.

(d) The application was further supported by the affidavit of the applicant and has exhibited a letter from the chief, and has reiterated the grounds in support of the application in his depositions.

4. In Response to this application, the 1st Defendant/Respondent filed a Replying affidavit deponed on 22nd August 2025

5. It is his Response that

(i) The suit property Transmara/Nkararo/958 was first registered and a green card opened on 8th January 2021 following an adjudication process,

(ii) That the parcel had undergone the adjudication process within the Nkararo adjudication section as contemplated under the land adjudication Act,

(iii) There was no committee case, objection case or Appeal to the Minister in respect to the suit property.

(iv) That the 1st Respondent purchased the suit land in November 2022, and the same was registered in his name on 13th December 2023.

(v) That the plaintiff is not in possession or occupation of the suit property, the plaintiff started tilling the land after filing the suit, and the plaintiff/applicant resides on Nkararo/722 and Nkararo/625 having acquired the same through adjudication.

(vi) That the suit has not met the threshold to sustain a claim of adverse possession under the provisions of the limitations of Actions Act.

6. In support of the above depositions the Respondent exhibited before court, a copy of the green card for Nkararo/958, sketch map of Nkararo Registry map sheet No. 19, photographs showing tilling, official searches for Nkararo 722 and Nkararo/652, google maps print out.
7. On the strength of the above the Respondent prayed for dismissal of the application.
8. The court directed both this application and the subsequent application by the 1st Defendant as Applicant seeking injunctive orders against the respondent to proceed by way of written submissions.
9. It is important to set out the details of the 2nd Application, the same sought.
 - (a) Temporary injunction do issue restraining the plaintiff/respondent his servants, agents or any other person/entity affiliated/associated with them or acting through or under their instructions from further ploughing trespassing into, interfering with and or planting sugarcane or any other crop on the property Transmara/Nkararo/958 until the hearing and final determination of this application until the hearing and final determination of this suit.
10. In support of this 2nd application, the following grounds were penned; -
 - (i) The Applicant is the registered owner of Transmara/Nkararo/958, the same being a first registration through an adjudication process; but is residing on Transmara/Nkararo/722.
 - (ii) That the plaintiff/respondent entered into the suit property and ploughed on a portion of it with an intention of planting sugarcane crop, actions meant to alter the nature of the property, which actions equally contravene orders of status quo issued on 21.07.2025.
11. A supporting affidavit by the Applicant was filed and it reiterates he ground in support of the application and has annexed a copy of

official search, a copy of a title, and copies of searches of Transmara/Nkararo 722 and photographs showing a tilled portion.

12. As noted elsewhere, both applications were argued by way written submissions, which the court has considered.

Issues for Determination

13. The issues arising from the application
- (i) the affidavits and submissions are whether or not the applications are merited; in doing so, the court shall determine whether the threshold of grant of temporary injunction has been achieved in each of the application?
 - (ii) What reliefs ought to issue
 - (iii) Who bears the costs of the application?

Analysis and Determination

14. The principles of grant of a temporary injunction were stated in Giella vs. Cassman Brown Ltd. The Principles are; -

- (i) The Applicant must show a prima facie case with a probability of success.***
- (ii) The applicant must demonstrate that he will suffer irreparable harm which cannot be compensated by damages.***
- (iii) The court is in doubt, it will decide the matter on a balance of convenience.***

while a prima facie case was defined in Mrao Limited vs First American Bank of Kenya Ltd and Others (2003) KLR as follows, ***“a prima facie case is one 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***

part so as to call for an explanation or rebuttal from the latter.”

15. Given the above definition of a prima facie case, has the Applicant in the first application dated 11.07.2025 established a prima facie case?
16. In his Application dated 11.07.2025, the plaintiff/applicant has pleaded that he has sued for orders of adverse possession in respect of Transmara/Nkararo/958, having resided from 1968 and established a home thereon with permanent buildings.
17. The Applicant did not however exhibit, photographs of the houses and/or permanent buildings in the said suit property, the 1st defendant/respondent google maps print out which shows the suit property as vacant.
18. The Applicant has thus not demonstrated a right that has been infringed so as to call a rebuttal from the Respondent.
19. It follows that the Applicant having not demonstrated occupation of the suit property has not established a prima facie case as defined in Mrao Limited.
20. When an Applicant does not establish a prima facie the court does not need to inquire on the other two conditions for grant of an injunction as stated in Kenya Commercial Finance Ltd vs. Afraha Educational Society Ltd where the court held “***...if a prima facie case is not established then irreparable injury and balance of convenient need no consideration...***”
21. In this regard the prayer for a temporary injunction as sought by the Applicant in the first Application has not met the threshold for grant of temporary injunction and the same fails.
22. Applying the same test to the 2nd Applicant. The court notes that the application is expressed to have been brought under order 40 Rules 1, 2 and 3 of the civil procedure Rules.
23. Order 40 Rule 1 provides as follows

“40 Rule 1

Where in any suit it is proved by affidavit or otherwise

(a) That any property in disputed 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....”

24. The Defendant/Applicant has only filed a Replying affidavit, in respect of the originating summons, the directions in respect of the O.S have not been issued to convert the O.S into a plaint, hence the Defendant/Applicant does not have a counterclaim as yet.
25. The Replying affidavit has sought a permanent injunction against the Plaintiff/Respondent, but has not sought for any declaration or any other reliefs.
26. Can a temporary injunction issue in favour of the Defendant/Applicant in this 2nd application. The answer is a resounding no.
27. A resounding no, because as was held in the decision in the case of Monica Wangari Ruthi and Another Vs. Kenya Commercial Bank Ltd and Another (2010) KEHC 2998 KCR the prayer for a permanent injunction cannot exist in vacuum. It has to be supported by other orders.
28. The court in the Monica Wangari Ruthi held as *inter alia*,
“A perusal of the prayers in the Plaint reveal that the plaintiff is only seeking a permanent injunction to issue against the 1st Respondent to restrain it from selling the suit premises by public auction or otherwise.....the prayer for injunction cannot exist in a vacuum.....It has to be supported by other orders.....on that score alone, I would hold that no prima facie with probability of success has been made by the applicants.....”
29. Similarly, and in view of the above the Applicant in the 2nd Application has not established a prima facie case with probability of

success and the court shall not enquire into the other two limbs of Giella vs. Cassman Brown.

30. The 2nd Application sought by the Defendant/Applicant equal fails.
31. The disposition is that both applications dated 11.07.2025 and 14.08.2025 are hereby dismissed with costs in the cause.
32. The court notes that at the Ex-parte stage and in relation to application dated 21.07.2025, Justice Munyao Silla, the duty Judge granted interim order of maintenance of status quo, in order to preserve the suit properties, the order of maintenance of status quo is extended until this matter is heard and determined.
33. The status quo being the one that was obtaining on 21st July 2025 when the order was issued, hence the occupier to remain in occupation, and the register to remain in name of the registered owner.
34. For avoidance of doubt, this status quo order is not meant to facilitate an entry by any person into Transmara/Nkararo/958 and Transmara/Nkararo/855, and/or evict anyone who was in occupation as at the time the order was initially issued.
35. There shall be no orders as to costs.

Dated at Kilgoris this 8th day of December, 2025.

Hon. M.N Mwanyale
Judge

In the presence of

CA - Emmanuel/Sylvia/Sandra

Mr. Okiamba for Plaintiff

Mr. Shira for Defendants

