



**Tarus v Hustler Transport Limited (Environmental and Land Originating  
Summons E017 of 2019) [2025] KEELC 8515 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8515 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2019**

**CK YANO, J**

**DECEMBER 4, 2025**

**BETWEEN**

**GABRIEL KIPCHIRCHIR TARUS ..... APPLICANT**

**AND**

**HUSTLER TRANSPORT LIMITED ..... RESPONDENT**

**RULING**

1. The Applicant in this matter through a Notice of motion dated 16<sup>th</sup> July, 2025 seeks the following orders:-
  1. Spent
  2. Spent
  3. Pending the hearing and the determination of this suit the proceedings in Eldoret Chief Magistrate Court Criminal Case No. E453 of 2025 be stayed.
  4. Pending the hearing and determination of the suit there be an order of injunction to restrain the respondent from evicting the applicant from land LR. Pioneer Ngeria Block 1 (EATEC) 7082, 7083, 9722, 9723, 9724 and 9725 or in any way dealing with them.
  5. Spent.
  6. Costs of the application be provided for.
2. The application is premised on the grounds set out on the face of the motion as well as the supporting affidavit of Gabriel Kipchirchir Tarus, the applicant herein, sworn on the same date. He deponed that he filed this case seeking a declaration that he has obtained title to the suit parcels of land under adverse possession. That the respondent had earlier on filed Eldoret ELC No. 58 of 2015 seeking the applicant's



eviction from the same parcels of land and he filed his defence. That the said suit was transferred to the subordinate court and re-assigned Eldoret Chief Magistrate Court Land Case No. 118B of 2018.

3. The applicant averred that while the two matters are pending hearing and determination, the respondent herein has gone ahead and filed a complaint with the Police over the applicant's being on the land and he has been charged in Eldoret Chief Magistrate Criminal Case No. E453 of 2025 which was set for hearing on 21<sup>st</sup> July, 2025. He averred that there is need to have the proceedings in the criminal case stayed until the issue in the two cases as to who has proprietary rights over the parcel of land between the applicant and the respondent is resolved. That it is only fair and just that the proceedings in the criminal case are stayed to await the resolution of the dispute pending before this honourable court. Further, that the real dispute herein is not criminal but a dispute over land and rights thereon.
4. The applicant averred that the subordinate court cannot deal with matters to do with adverse possession, and that the pursuit of criminal proceedings while the issue of adverse possession and the applicant's eviction from the parcels of land is being pursued before this honourable court is an abuse of the court process and the criminal justice process as well. That the criminal case constitutes a violation of his right to land.
5. The applicant deponed that unless the proceedings in the criminal case are stayed his suit and the application will be rendered nugatory and or overtaken by events. That the respondent is using the criminal process with a view of securing his eviction from the suit parcels of land.
6. The applicant argues that he has established a prima facie case with a probability of success and that he stands to suffer irreparable harm if the orders sought are not granted. That the orders sought therefore will serve the interests of justice and preserve the subject matter of the dispute.
7. In opposing the application, the respondent filed a replying affidavit sworn on 16<sup>th</sup> September, 2025 by Abraham Kipkoech Korir, a shareholder and director of the respondent company. He deponed that he is aware that Eldoret Chief Magistrate Court Land Case No. 118B of 2018 (formerly Eldoret ELC No. 58 of 2015) filed by the respondent against the applicant and 2 others was transferred to this court to be heard concurrently with the present case filed by the applicant.
8. Relying on legal advice, the deponent averred that this court lacks jurisdiction to determine the present application in respect of the prayer to stay the criminal proceedings pending before the Chief Magistrates Court. That this court being a specialized court established under Article 162(2)(b) of the Constitution and the Environment & Land Court Act, 2011, lacks jurisdiction to interfere with or stay proceedings before a criminal court. That the present suit is a Civil claim concerning ownership, possession and occupation of land, and the cause of action is grounded on civil wrongs including unlawful occupation and trespass which issues fall squarely within the jurisdiction of this honorable court and are distinct from criminal proceedings pending before the criminal court. That moreover, the criminal case referenced by the applicant does not and cannot conclusively determine ownership or proprietary rights over the subject property.
9. The deponent has further deponed that he has been advised by the respondent's counsel on record that the application is premature, procedurally defective, and amounts to an abuse of the court process. That the applicant is attempting to use this Honourable Court to achieve an outcome outside its legal mandate, and that the Environment and Land Court cannot supervise, interfere with or issue orders directed at proceedings in a criminal court.
10. It is further averred that if the applicant has any grievances regarding the conduct or propriety of criminal proceedings against him, the same ought to be addressed before the appropriate criminal court



or seek redress via a Constitutional Petition where warranted and not seek relief in this matter. That criminal proceedings are independent and the criminal case against the applicant arises from criminal conduct and is being prosecuted by the state and its existence is independent of the civil proceedings herein. It is stated that the applicant has not demonstrated how the pending criminal proceedings would directly prejudice his ability to prosecute the present civil suit. That in any event, the application is in bad faith and has been filed as an afterthought because two (2) prosecution witnesses have already testified before the Chief Magistrates court in the criminal trial. That if the applicant had a legitimate concern about the criminal trial, he would have moved a court of competent jurisdiction as soon as the criminal proceedings were initiated against him.

11. Again relying on advice by the respondent's counsel, the deponent avers that the law allows the concurrent running of criminal and civil proceedings. That the applicant has failed to demonstrate any exceptional circumstances justifying the extraordinary remedy of staying criminal proceedings through a parallel civil suit. It is argued that the mere overlap in the subject matter being the suit properties does not warrant such interference, particularly given that the criminal case is already underway before a competent court.
12. With regard to the injunctive relief also sought by the applicant, it is averred that the same is on the basis of a claim for adverse possession which is yet to be established or adjudicated by this court. It is the respondent's contention that the applicant has not demonstrated a prima facie case with a probability of success as required under the principles in *Giella vs Casman Brown*, since the claim of adverse possession must be determined on evidence during trial.
13. It is averred that the respondent is the registered and lawful owner of the suit parcels of land, and the applicant's alleged possession of the unidentified portion of the suit properties has not been peaceful, open or continuous for the statutory period of 12 years, and is the subject of dispute which further disqualifies him from protection under the doctrine of adverse possession at this interlocutory stage. It is further averred that the applicant is a trespasser on the suit properties having entered and remained thereon without the respondent's consent, authority or any lawful justification. That the respondent has not acquiesced to the applicant's presence on the suit properties and his occupation has been contested and resisted by the respondent since his occupation in 2014 and over the years including through the pending suit and land case No. 118B of 2018 (formerly Eldoret ELC No. 58 of 2015).
14. Again relying on advice by the respondent's counsel the deponent stated that the applicant will not suffer irreparable harm that cannot be compensated in damages, while the respondents continues to suffer loss and deprivation of its legal rights over the suit properties. Further, that the balance of convenience favours the respondent being the registered proprietor and not the applicant who is in illegal occupation and seeks to delay the lawful use of the suit properties pending the outcome of a speculative claim.
15. It is also averred that the application for injunctive orders is premature, seeks final orders at an interlocutory stage and amounts to inviting the court to determine the main suit through an interim application. That it is in the interest of justice and fairness that the application be dismissed with costs for being misconceived, frivolous and an abuse of the court process.
16. The application was canvassed by the way of written submissions. The applicant filed his submissions dated 26<sup>th</sup> September, 2025 while the respondents filed theirs dated 28<sup>th</sup> October, 2025. The court has read and considered the said submissions as well as the authorities relied on, and I need not to reproduce the same in this ruling.
17. Having considered the application, the response and the rival submissions, I find that the following issues arise for determination:-



- i. Whether this court has jurisdiction to stay the criminal proceedings before the Magistrates Court.
  - ii. Whether court should grant the orders sought by the applicant.
18. The first prayer sought by the applicant herein is an order staying the proceedings in Eldoret Chief Magistrates Court criminal case No. E453 of 2025 pending the hearing and determination of this suit. The applicant averred that the subordinate court cannot deal with matters of adverse possession and that the pursuit of the criminal proceedings while the issue of adverse possession and the applicant's eviction from the suit properties are pending is an abuse of the court process. That the criminal case constitutes a violation of the applicant's right to land. In response, the respondent argued that this court lacks jurisdiction to stay proceedings before a criminal court.
19. This court is established under Article 162(2)(b) of the *Constitution* as a specialized court with the status of the High Court to hear and determine disputes relating to the Environment and the use and occupation of, and title to, land. Article 162(3) empowered parliament to determine the jurisdiction and functions of this court. Consequently, parliament enacted the Environment & Land Court Act 2011 to give effect to Article 162(2) (b) of the *Constitution*.
20. Section 13 of the ELC Act sets out the jurisdiction of the court and subsection (1) provides as follows:-
  1. The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the *Constitution* and with the provisions of this Act or any other written law relating to Environment & Land.
21. Section 13(2) of the said Act lists down the disputes that the court shall have power to hear and determine relating to the environment and land while section 13(5) gives the court supervisory jurisdiction over the subordinate court.
22. On the other hand, Article 165 of the *Constitution* establishes the High Court which shall have unlimited original jurisdiction in criminal and civil matters, except in respect of matters reserved for the exclusive jurisdiction of the Supreme Court or falling within the jurisdiction of the courts contemplated in Article 162(2) and Article 165 (b) grants the High Court supervisory jurisdiction over subordinate courts among others. Article 165(7) specifically provides that the high Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
23. In this application the applicant is seeking the court's intervention in staying criminal proceedings before the magistrate's court. My reading and understanding of Article 162(2)(b) of the *Constitution* and section 13 of the ELC Act is that staying of the criminal proceedings is not among the issue that this court (ELC) has been empowered to exercise over. In my view, the same falls squarely within the High Court as stipulated under Article 165 of the *Constitution*.
24. On this issue of whether the ELC can stay criminal proceedings, in Benard Nyamanya Mogaka 2 others vs Peter Momanyi Kebati another DCI Kisii (Interested Party) 2021 KEELC 2261 (KLR), the court held that:-

“...What this means is that unlike the High Court, the ELC has no supervisory jurisdiction over subordinate courts or other quasi-judicial bodies, particularly in the exercise of their criminal mandate.



13. In the case of Republic vs Karisa Chengo 2 Others (2017) eKLR, the Supreme Court considered the question of the constitutionality of mixed benches empanelled to hear criminal appeals and held as follows:

“It follows from the above analysis that although the High Court and the specialized courts are of the same status as stated, they are different courts. It also follows that judges appointed to those courts exercise varying jurisdiction depending upon the peculiar courts to which they are appointed. From a reading of the statutes regulating specialized courts, it is a logical inference in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced and flows from Article 165 (5) of the *Constitution*, which prohibits the High Court from exercising jurisdiction in matters reserved for the exclusive jurisdiction of the Supreme Court under the *Constitution* or (b) falling within the jurisdiction of the Courts contemplated in Article in this case that 162(2).

In this case it therefore also follows that Angote J appointed as a judge of the Environment and Land Court and not the High Court had no jurisdiction to determine criminal appeals. Consequently, we concur with the Court of Appeal that the Gazette Notice No. 1301 of 4th October 2013, by which the former Chief Justice empanelled him to sit and determine criminal appeals was unlawful and unconstitutional”

14. In the instant case, the Applicant would like this court to stay intended criminal proceedings against him. From the above decision in the Karisa Chengo Case and the provisions of Article 165(5) of the *Constitution* the proper forum for making such an application is the High Court and not the Environment and Land Court.

15. Be that as may, Section 193 of the Criminal Procedure Act Cap 75, Laws of Kenya, provides that:

“the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of criminal proceedings.”

25. Moreover, the fact that there are civil proceedings in this court regarding the suit property herein is no bar to the proceedings in the criminal court. This was explained in the case of Republic vs Director of Public Prosecutions; CMM (Exparte Applicant) (Judicial Review Application E004 of 2025) [2025] KEHC 4532 (KLR), where the court held that:-

“Furthermore, Section 193A of the Criminal Procedure Code allows for concurrent criminal and civil proceedings and provides that any matter in issue in any criminal proceedings that is also directly or substantially in issue in a pending civil proceedings shall not be a ground for any stay, prohibition or delay in criminal proceedings. It is therefore within the law to



have proceedings run simultaneously with criminal charges over the same facts or in regard to the same property.”

26. Consequently, it is my finding that this court lacks the requisite jurisdiction to stay the criminal proceedings before the Magistrate’s court.
27. The second issue is whether the applicant has made out a case to warrant the grant of an order of temporary injunction. The power to grant temporary injunction is at the discretion of the court. This discretion however should be exercised reasonably and judiciously and on sound legal principles.
28. Before granting a temporary injunction, the court must consider the principles set out in the case of *Giella vs Cassman Brown & Co. Ltd* (1973) EA358 where the Court of Appeal stated as follows:-

“...first, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

29. The first element to be proved is that the applicant demonstrates that he has a prima facie case with a probability of success. The applicant herein seeks an injunction against the respondent restraining it from evicting him from the suit properties pending the hearing and determination of the case. The applicant’s claim is that it has acquired the suit properties by way of adverse possession. The applicant, however, admits that the respondent had earlier filed Eldoret ELC No. E058 of 2015 seeking the applicant’s eviction from the same parcels of land and that the applicant filed his defence. That case was transferred to the subordinate court and re-assigned Eldoret Chief Magistrates court land case No. 118 B of 2018, and was again transferred to this court to be heard concurrently with this case. As can be seen from the above, the earlier suit was filed way back in 2015. The applicant admitted that he even filed his defence. If indeed the applicant was apprehensive that the respondent was going to evict him before the determination of the case, it is not clear why he did not seek the orders of injunction in the earlier case. It appears to me that the injunction sought herein is an indirect attempt to bypass the eviction case which was filed earlier.

30. Section 6 of the [Civil Procedure Act](#) provides as follows:-

“No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

31. Further, that provision of law is clear that the latter suit should be stayed. There has been no application to have this suit consolidated with the earlier suit. The only order the applicant prayed for in his application dated 5.2.2025 and which was allowed by the court on 10.3.2025 was for Eldoret CMC ELOC case No. 118B of 2018 to be transferred to this court to be tried concurrently with this case. Since this court has not had the benefits of perusing the proceedings in the earlier suit, I am apprehensive that granting the orders sought herein may be contradictory to any orders that may have been made in that earlier suit which indeed was filed 4 years before the present suit was filed.
32. A temporary injunction is not given as a matter of right. It is a discretionary and equitable remedy granted by the court only when strict conditions are satisfied. The long delay in filing an application



for temporary injunction from 2015 when ELC case No. 58 of 2015 (later transferred and re-named CMC ELC case No. 118B of 2018) which as a matter of fact seeks eviction makes me not persuaded to grant the orders in this case.

33. Further, Order 40 of the Civil Procedure Rules provides :-

1. Cases in which temporary injunction may be granted;

Where in any suit it is proved by affidavit or otherwise :-

- a. That any property in dispute 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 by order grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienating, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

34. In this case, the applicant has not proved that the suit property is in danger of being alienated or otherwise dealt to his detriment by the respondent. Whereas the applicant alleges he risks eviction from the suit parcels, I am not persuaded since there have been proceedings between the parties herein over the suit properties since the year 2015, and no eviction or even attempted eviction has taken place. The delay in filing an application for injunction particularly in the earlier suit creates doubts about the applicant's intention. I also note that the Applicant did not in fact submit on the prayer for injunction and appears to have abandoned the same as rightly submitted by the respondent.

35. Arising from the above reasons, I find that the notice of motion dated 16<sup>th</sup> July, 2025 lacks merit and the same is dismissed with costs to the Respondent.

36. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 4<sup>TH</sup> DAY OF DECEMBER, 2025 VIDE MICROSOFT TEAMS.**

**HON. C. K. YANO**

**ELC, JUDGE**

In the virtual presence of:-

Mr. Kiprono for Respondent.

Mr. Wainaina holding brief for Mr. Momanyi for Applicant.

Court Assistant - Laban.

