



**Alex & another v M’Mbii & another (Environment and Land Case
E012 of 2025) [2026] KEELC 360 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 360 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND CASE E012 OF 2025**

**BM EBOSO, J
JANUARY 26, 2026**

BETWEEN

ROSE GATURO ALEX 1ST PLAINTIFF

JENNIFER MUKWAMUGO BRURIA 2ND PLAINTIFF

AND

JEREMIAH M’MBII 1ST DEFENDANT

LAWRENCE MUTWIRI 2ND DEFENDANT

RULING

1. The two plaintiffs in this suit are daughter-in-law and mother-in-law respectively. They initiated this suit soon after this court disposed Chuka ELC Appeal No E010 of 2024 in which the court held that the 2nd plaintiff had failed to prove that she was entitled to 2 acres out of land parcel number Kiera/E.Magutuni/397 (hereinafter referred to as “the suit land”). The two defendants in the suit were the two appellants in the appeal. The appeal was disposed in favour of the two defendants. The two defendants are father and son. The 1st defendant is a brother to the 2nd plaintiff.
2. In 2015, Jennifer Mukwamugo Bururia (the 2nd plaintiff) initiated Chuka CMC E&L Case No 10 of 2015 against Jeremiah M’Mbii and Lawrence Mutwiri (the 1st and 2nd defendants respectively). Her claim was that she was entitled to two (2) acres out of the suit land pursuant to a customary trust and/or a will by her late father. She contended that the suit land was ancestral/family land that belonged to their late father, the late M’Mbururia Njeru M’Rimunya. The Chief Magistrate Court heard her claim and disposed it vide a judgment dated 7/6/2024. The judgment culminated in Chuka ELC Appeal No E010 of 2024.
3. The above appeal was disposed by this court (Eboso J) vide a judgment dated 21/7/2025 in which the court held that the 2nd plaintiff had failed to prove that she was entitled to the 2 acres that she claimed



out of the suit land. Soon after the 2nd plaintiff lost in the appeal, she teamed up with her daughter-in-law and brought the present suit vide an originating summons dated 22/9/2025.

4. Through the originating summons, the two plaintiffs sought an order decreeing that they have become entitled to 2 acres out of the suit land through adverse possession. Together with the originating summons, they brought a notice of motion dated 22/9/2025 seeking: (i) an interlocutory order of inhibition barring registration of any dealings in the land registrar relating to the suit land; and (ii) an interlocutory order restraining the defendants against evicting them from the suit land. The said application dated 22/9/2025 is the subject of this ruling. The key question to be determined in the ruling is whether the application satisfies the criteria for granting an interlocutory injunctive order under Order 40 of the Civil Procedure Rules. I will summarize the parties' respective cases before I dispose the question.
5. The application is premised on the grounds outlined in the motion and in the 1st plaintiff's affidavit dated 22/9/2025 and supplementary affidavit dated 31/10/2025. It was canvassed through written submissions dated 20/11/2025, filed by M/s Ojwang Sombe & Co Advocates. In summary, the applicants' case is that, the suit land was previously registered in the name of the 1st defendant and is currently registered in the name of the 2nd defendant. They contend that "all their entire lives", they have occupied and utilized a portion of the suit land measuring approximately 2 acres. Their occupation of the said 2 acres has been open, continuous and uninterrupted and has been for a period exceeding 12 years. They add that the defendants' title to the 2 acres has become extinguished by operation of the law.
6. The applicants contend that their claim is not res judicata because the preceding suit was founded on customary trust and the claim in this suit is founded on adverse possession which is a completely different cause of action. They add that the 1st plaintiff was not a party to the preceding suit. They emphasize that the issue of adverse possession was not determined in the preceding suit. They urge the court to grant them the interlocutory orders.
7. The defendants/respondents opposed the application through their respective replying affidavits dated 15/10/2025 and written submissions dated 24/11/2025, filed by M/s Angela Nyagah Advocates. Their case is that the application is misconceived, baseless, an abuse of the court process and calculated to unfairly restrain them from exercising their rights as owners and occupiers of the suit land.
8. The respondents add that Kiera/E.Magutuni/397 measures approximately six (6) acres, adding that the 2nd plaintiff's claim of entitlement to 2 acres out of the suit land was the subject of a litigation and a determination that culminated in Chuka ELC Appeal No E010 of 2024 which they won. They state that the 2nd plaintiff approached the 1st defendant after separating from her husband and sought a temporary residence. Being a sister, the 1st defendant allowed her to temporarily reside on a small portion of the suit land measuring ½ acre to enable her sustain herself and her son as she made arrangements to find her own property. They contend that the 2nd plaintiff's stay on the suit land was purely permissive. When he subsequently reminded the 2nd plaintiff that her stay on the suit land was temporary, she became hostile and filed Chuka CMC E & L Case No E010 of 2015 against them, claiming to be entitled to 2 acres out of the suit land. Her claim was heard and subsequently determined on merits vide a judgment rendered on 21/7/2025 in Chuka ELC Appeal No E010 of 2024.
9. The respondents argue that the plaintiffs' suit is res judicata because the 2nd plaintiff previously litigated over the same subject matter against the respondents. They add that because the 1st plaintiff is a daughter-in-law to the 2nd plaintiff, her occupation of the suit land was dependent and derivative of the 2nd plaintiff's presence on the suit land. They further argue that because the 2nd plaintiff's occupation of the suit land was permissive and arose from a family arrangement, the same could never



have been adverse, adding that the 1st plaintiff's presence on the suit land was equally permissive and non-hostile because it was dependent on the 2nd plaintiff's presence on the suit land.

10. It is the case of the respondents that the plaintiffs/applicants have not met the threshold for an interlocutory injunction. They urge the court not to permit the applicants to abuse the court process by re-litigating issues that have already been heard and determined or by trying to convert a permissive occupation into ownership through the backdoor.
11. The court has considered the application, the response to the application and the parties' respective submissions. As pointed out in paragraph 4 of this ruling, the key question to be determined in the ruling is whether the application dated 22/9/2025 satisfies the criteria for granting an interlocutory injunction under Order 40 of the Civil Procedure Rules.
12. The relevant criteria was outlined by the Court of Appeal for East Africa in *Giella v Cassman Brown & Company Ltd* (1973) EA 358. First, the applicant is expected to demonstrate a prima facie case with a probability of success. Secondly, he is required to demonstrate that he would stand to suffer injury that may not be adequately indemnifiable through an award of damages were the court to decline to grant him the interlocutory injunctive relief. Thirdly, should the court have doubt on both or either of the above, the application is to be determined on the basis of the balance of convenience.
13. Over the years, our courts have developed a fourth principle, to the effect that at the stage of disposing the plea for interlocutory injunctive relief, the trial court should not make definitive or conclusive pronouncements or findings on the substantive issues in the suit. Definitive/conclusive pronouncements or findings are to be reserved to be made at the stage of final disposal of the case.
14. Have the applicants met the above criteria? The 1st applicant is a daughter-in-law to the 2nd applicant. The 2nd applicant teamed up with her daughter-in-law to file this suit after this court made a finding in *Chuka ELC Appeal No E010 of 2024* to the effect she had failed to prove that she was entitled to 2 acres out of the suit land. Without making any definitive or conclusive finding on the issue of res-judicata, I do not think the 2nd applicant has, at this interlocutory stage, demonstrated that their claim, which is joint, does not fall within the categories of suits that are statute-barred under Section 7 of the *Civil Procedure Act*. Suffice to state that our courts have, in a line of decisions, adopted the following principle that was outlined in the English case of *Henderson v Henderson* (1843) 67 ER 313:

“Where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case and will not (except in special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which parties exercising reasonable diligence, might have brought forward at the time.”

15. Secondly, it does emerge that the parties to this suit are close family members. The 2nd plaintiff and the 1st defendant are siblings. The 1st plaintiff is a daughter-in-law to the 2nd plaintiff. The 2nd defendant is a son to the 1st defendant. Again, without being definitive or conclusive, it suffices to observe that the prevailing jurisprudence, which binds this court, is that the doctrine of adverse possession is not invoked against a family member in an African family set up when a registered land owner fails to eject a close relative from his land (See: Court of Appeal pronouncements in: (i) *Kisumu Civil Appeal No.*



27 of 2013 – Samuel Kihamba v Mary Mbaisi; and (ii) Nyeri Civil Appeal No. 204 of 2019 – Ginson Kiragu Njagi v Stanley Bundi Rimberia & Another).

16. Lastly, the two plaintiffs elected to bring a joint claim relating to the same subject matter. It has emerged that the 1st plaintiff is a daughter-in-law to the 2nd plaintiff and her presence on the suit land was by dint of her marriage to the 2nd plaintiff's son. She has, at this stage, not demonstrated that she has an independent claim to a specific portion of the suit land. Put differently, at this interlocutory stage, she has not demonstrated an independent claim against the defendants.
17. For the above reasons, it is the finding of this court that the applicants have failed to demonstrate a prima facie case with the probability of success.
18. Have the applicants demonstrated that they stand to suffer injury that may not be indemnifiable through an award of damages. I do not think so. The 2nd plaintiff brought the 1st plaintiff on board to re-litigate her claim of entitlement to 2 acres after she lost in Chuka ELC Appeal No E010 of 2024. She had ample opportunity to put forth her entire claim. She was heard by both the trial court and the appellate court. She lost in the appellate court. She had the right to pursue a second appeal in the manner prescribed by the law. The question of irreparable damage does not arise in the circumstances.
19. Lastly, the balance of convenience tilts in favour of declining to issue interlocutory orders that would, in essence, amount to a review of the findings and the decree of this court in Chuka ELC Appeal No E010 of 2024.
20. For the above reasons, the court finds that the application dated 22/9/2025 does not meet the criteria for granting interlocutory injunctive orders under Order 40 of the Civil Procedure Rules. Consequently, the application is rejected and dismissed for lack of merit.
21. In tandem with the general principle in Section 27 of the Civil Procedure Act – that costs follow the event, the applicants shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 26TH DAY OF JANUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Ms. Ochola for the Plaintiff/Applicant

Ms. Nyaga for the Defendants/Respondents

Court Assistant – Nelly

