



**Kananu v Rimberia (Environmental and Land Originating Summons
E006 of 2025) [2026] KEELC 136 (KLR) (19 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 136 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2025
BM EBOSO, J
JANUARY 19, 2026**

BETWEEN

MARTHA KANANU APPLICANT

AND

JEREMIAH MWATHE RIMBERIA RESPONDENT

RULING

1. This suit was initiated through an originating summons dated 21/3/2025. Through the originating summons, the plaintiff sought, inter alia, a declaration that the estate of the late John Kaaria has, through adverse possession, become entitled to ½ share of land parcel number Nyaki/Munithu/356. She sought to be registered as proprietor of the ½ share.
2. Subsequent to the filing of the originating summons, the plaintiff brought a notice of motion dated 9/9/2025 seeking an interlocutory status quo order to the effect that she should remain in actual possession of the suit land until the suit is heard and determined. As an alternative interlocutory plea, she prayed that pending the hearing and disposal of the suit, the defendant should be ordered not to enter or step into the suit land. The said application is the subject of this ruling.
3. The application was premised on the grounds set out in the motion and in the affidavit of Martha Kananu dated 9/9/2025. It was canvassed through written submissions dated 14/11/2025, filed by M/s M G Kaume & Company Advocates. The case of the applicant is that, she is the widow of the late John Kaaria who was a biological brother to the defendant. The late John Kaaria and the defendant were and are still the co-registered proprietors of the suit land but their shares are not spelt out.
4. She adds that the defendant killed John Kaaria in 1996 over the suit land and he was subsequently convicted in 1998 and imprisoned for 3 years. That since then, the defendant has never stepped on the suit land and that she is the one who has been utilizing it. She adds that following the death of her husband, the family and the clan took the land dispute to the Njuri Ncheke and the Njuri Ncheke



held that the defendant was to compensate her family and that he (the defendant) was to get only ½ acre portion of the land which he was to sell and buy land elsewhere because he was dangerous. She further states that although the defendant filed Meru CMC Miscellaneous Application No E015 of 2023 seeking a partitioning of the suit land into two halves and obtained orders to that effect, she filed Meru ELC Appeal No E047 of 2023 challenging the said orders.

5. The applicant contends that she brought the present suit because the respondent went to the land seeking a portion of it. She adds that it is only a surveyor “who can do the partition” and not the defendant.
6. The respondent opposed the application through a replying affidavit dated 14/10/2025 and written submissions dated 11/11/2025, filed by M/s Ng’entu & Company Advocates. The case of the respondent is that, whereas the applicant brought this suit on behalf of the estate of the late John Kaaria, she is in this court in ELCA No E047 of 2023 contending that she is not the personal representative of the late John Kaaria. He adds that the late John Kaaria and himself are the registered co-owners of the suit land and as such, he has rights over the suit land. The respondent faults the applicant for using the application to obtain a stay of the order issued in Meru CMC E & L Miscellaneous Application No E015 of 2023. He further faults him for misrepresenting facts to the court with a view to misleading it. He urges the court to reject the application.
7. The court has considered the application, the response to the application and the parties’ respective submissions. The single issue to be determined in this ruling is whether the application satisfies the criteria for granting an interlocutory injunction.
8. The relevant criteria was outlined by the Court of Appeal for East Africa in *Giella v Cassman Brown* [1973] EA 358. First the applicant is required to demonstrate a prima facie case with the probability of success. Secondly, he is required to demonstrate that if the interlocutory injunction is not granted, he will stand to suffer injury that may not be adequately indemnifiable through an award of damages. Thirdly, if the court has doubts on both or either of the above, the application for an interlocutory injunction should be decided based on the balance of convenience.
9. Over the years, our superior courts have developed a forth limb of the criteria, to the effect that at the time of disposing the plea for an interlocutory injunction, the court should avoid making conclusive or definitive pronouncements on contested issues in the dispute. Conclusive and definitive pronouncement should be reserved to be made at the final disposal of the case.
10. Has the applicant demonstrated a prima facie case? The applicant took out the originating summons on behalf of the estate of the late John Kaaria. She has not placed before court a grant giving her the locus standi to initiate proceedings on behalf of the estate of the late Kaaria. Without a grant, she does not have the locus standi to bring a suit on behalf of the estate.
11. Secondly, it has emerged from the evidence presented by the respondent that the respondent applied for partitioning of the suit land vide Meru CMC E & L Miscellaneous Application No E015 of 2023 and the Chief Magistrate Court granted the plea. Aggrieved by the orders of the lower court, the applicant filed Meru ELC Appeal No E047 of 2023 in which she contended that she did not have capacity to be sued by the respondent because she did not have a grant relating to the estate of the late Kaaria. At this point, she has not demonstrated that she now has a grant.
12. Thirdly, it does emerge from the official search exhibited by the applicant that the suit land is registered in the joint names of the late Kaaria and the respondent. The court doubts that as a co-registered owner, the late Kaaria would be an adverse possessor against his co-registered owner. The law, as I understand



it, is that co-registered owners are trustees of each other and are entitled to be on the land as of right. They can not be said to be on their own land as adverse possessors.

13. Fourthly, the late Kaaria and the respondent are said to be brothers. The court of Appeal has stated in a line of binding pronouncements that in an African Society set up, the doctrine of adverse possession does not apply to occupation of land by a family member. [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]
14. Fifth, it has emerged that parties to this dispute litigated in the Chief Magistrate Court and the Lower Court allowed partitioning of the co-owned land. There is, therefore, proper basis in the contention by the respondent that the applicant is using the present application as a back-door tactic to obtain a stay of the orders of the lower court.
15. Taking the foregoing into account, I don't think the applicant has demonstrated a prima facie case with the probability of success.
16. In the absence of a grant giving her the locus standi to sue on behalf of the estate of the late Kaaria, I do not think the applicant has demonstrated the likelihood of irreparable injury to the estate.
17. Lastly, the court has made a clear finding that the applicant has failed to satisfy the first and the second limbs of the requirements in *Giella v Cassman Brown* [1973] EA 358. The court has no doubts about that. Consequently, the finding of the court is that the application dated 9/9/2025 does not meet the criteria for granting an interlocutory injunction.
18. For the above reasons, the application dated 9/9/2025 is rejected and dismissed for lack of merit. In tandem with the general principle in Section 27 of the *Civil Procedure Act*, the applicant shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF JANUARY, 2026

B M EBOSO [MR]

ELC JUDGE

