



**Ongondo & another v Obunga & another (Environmental and Land Originating Summons E057 of 2025) [2026] KEELC 366 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 366 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY**  
**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E057 OF 2025**  
**FO NYAGAKA, J**  
**JANUARY 22, 2026**

**BETWEEN**

**GEORGE ODHIAMBO ONGONDO ..... 1<sup>ST</sup> APPLICANT**

**RICHARD OCHIENG MIRERI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**BARNABAS OBUNGA ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR AT HOMA BAY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicants filed a chamber summons application dated 1<sup>st</sup> September 2025 seeing orders that:
  1. ...Spent
  2. That this Honourable Court be pleased to grant an injunction deterring the Respondents, whether by themselves, agents, servants or otherwise howsoever from accessing, advertising, offering for sale, leasing, mortgaging, charging, transferring or assigning, subdividing and/or otherwise dealing with the suit property; L.R. Number Kasipul/kakelo Dudi/28; so as not to interfere with the Applicants' access and quiet possession;
  3. That this Honourable Court be pleased to direct the 1<sup>st</sup> Respondent to deposit the Title Deed and any other relevant proprietorship documents before this Honourable Court pending the hearing and determination of this suit;
  4. That the Officer in Charge of Ringa Police Station be directed to assist in enforcement of the orders of this Honourable Court; and
  5. That the costs of this application be provided for.



2. The application is premised on the grounds set out in the application as well as the supporting affidavit of George Odhiambo Ongondo sworn on even date. The applicants' case is that the 1<sup>st</sup> respondent has embarked on an unsanctioned eviction of the applicants together with their families hence the risk of the said families being rendered destitute, in addition to being exposed to irreparable psychological, emotional, social and economic loss.
3. Moreover, the applicants maintain that they have been in occupation of the suit property, and their ancestors have, for over fifty years been buried on the said property. The applicants also stated that there growing tensions among the larger family members as well as the general population and added that the local administration, including the office of the County Commissioner as well as the chief have been involved in attempts to tame the actions of the 1<sup>st</sup> respondent.
4. Lastly, the applicants stated that it is in the interest of justice that this courts grants the orders they now seek in their application.
5. The supporting affidavit annexed to the application and sworn by the 1<sup>st</sup> applicant herein begins by giving a historical context of the instant dispute. The 1<sup>st</sup> applicant deponed that his family as well as that of the 2<sup>nd</sup> applicant have been in occupation of the suit property since 1980 or thereabout to date.
6. the 1<sup>st</sup> applicant gave a detailed account of how his family came to be in occupation of the suit land, which he deponed to be a case of barter trade between his relatives. In this arrangement, the 1<sup>st</sup> applicant deponed that, his father, one Nicanor Ongondo Opar was allowed to enter into the suit property by his uncle, one Blatus Owande, in exchange for a larger parcel of land at his paternal grandfather's land. The 1<sup>st</sup> applicant deponed that he was 8 years of age when the said exchange happened.
7. The 1<sup>st</sup> applicant's further account of the history of the dispute was that, Blatus Owade had the suit land registered in his name in the year 1970; his grandfather entered into the suit property in 1975 thus paving way for the 1<sup>st</sup> applicant's father to take possession thereof in an arrangement that he described as barter trade between the family members involved.
8. As a consequence of the above family arrangements, the 1<sup>st</sup> applicant deponed the family took possession of the suit land, and lived therein uninterrupted, even the death of the parent. The 1<sup>st</sup> respondent further deponed that, by virtue of his father having entered the suit property through a legitimately recognized barter exchange as well as the fact of having lived on the suit land, openly and peacefully for more than twelve years, his family members are entitled to be registered as proprietors of the suit property.
9. The 1<sup>st</sup> Applicant attributed the instant dispute to the 1<sup>st</sup> respondent's actions, who deponed was allowed entry into the suit property by virtue of being a distant relative who, at the time did not have a parcel of land on which he could settle. The dispute, the 1<sup>st</sup> applicant stated emanated from the 1<sup>st</sup> respondent's claim over the suit property, yet he found the 1<sup>st</sup> and 2<sup>nd</sup> applicant in occupation.
10. In addition to the above stated, the 1<sup>st</sup> applicant deponed that he has always made use of the suit property. He added that the 1<sup>st</sup> respondent, aided by the 2<sup>nd</sup> respondent have caused the irregular registration of the suit property in the 1<sup>st</sup> respondent's name in a move aimed at disfranchising his family as well as that of the 2<sup>nd</sup> applicant, despite the 2<sup>nd</sup> respondent's knowledge that the applicants' relatives are buried in the suit property.
11. The 1<sup>st</sup> applicant further deponed that the issue of the 1<sup>st</sup> respondent's title to the property had been a subject in several family meetings, some of which were midwived by the local administration. He noted that the conclusions of these meetings are that the title documents held by the 1<sup>st</sup> respondent were



- questionable and that the applicants have a right to live peacefully in the suit property with each family being allowed to occupy the portion occupied by their parents. He also his large family concluded that the 1<sup>st</sup> respondent should not interfere with the boundaries of land parcels adjacent to the portions he occupies.
12. The 1<sup>st</sup> applicant maintained that the 1<sup>st</sup> respondent had all along been aware of his activities conducted openly on the suit property. As such, the 1<sup>st</sup> respondent is estopped from denying that the 1<sup>st</sup> respondent had acquired title to the property. Equally, the 1<sup>st</sup> appellant stated that his family has made improvements on the suit property by putting up both permanent and temporary structures thereon since his family took possession of the land in 1980.
  13. On the basis of the foregoing, the 1<sup>st</sup> applicant deponed that, title to the land held by the 1<sup>st</sup> respondent, if any, had been extinguished by operation of the law. If anything, the 1<sup>st</sup> applicant deponed that the 1<sup>st</sup> respondent holds the suit land in trust, having acknowledged his (1<sup>st</sup> applicant's) presence in the property. He added that that the 1<sup>st</sup> respondent's refusal to surrender the title he holds over the suit land as well as attempts to take possession of the property, subdivide, lease, dispose, mortgage and/or otherwise deal with the land in a manner likely to injure his interests amount to an actionable breach of law and trust on the part of the 1<sup>st</sup> respondent.
  14. The 1<sup>st</sup> applicant deponed that he believed that, given the circumstances of the case as well as on the advice of his counsel, the 1<sup>st</sup> respondent should surrender all title documents to him, failing which, the Deputy Registrar should execute the said transfer in his favour.
  15. Lastly, the 1<sup>st</sup> respondent deponed that he is entitled to maintain and prosecute the instant suit, having been in occupation of the said land for a period of over forty-seven (47) years.
  16. The 1<sup>st</sup> applicant annexed documents marked GOO-1 to his affidavit. Among the documents annexed thereto include: a copy of grant of letters of administration intestate to Lea Akelo Owande dated 10<sup>th</sup> June 2000, a copy of certificate of confirmation of grant issued to Lea Akinyi dated 24<sup>th</sup> October, 2002, copies of Identity Card documents of George Odhiambo Ongondo and Kennedy Otieno Ongondo, as well the copies of death certificates for Blatus Owande Opar and Sarah Atieno.
  17. Other documents annexed to the affidavit are: a copy of certificate title land parcel Kasipul/Kakelo Dudi/28 registered in the name of the Barnaba Obunga and issued on 21<sup>st</sup> November 2001, a copy of a transfer document issued to Lea Akelo and dated 24<sup>th</sup> October 2001, a letter from the Assistant County Commissioner, Kasipul East addressed to the Land Registrar seeking a resolution of claims of disinheritance dated and 17<sup>th</sup> march 2025, minutes of various meetings, and copies of official search for land parcels E/Kaspuil/Kakelo/Dudi/1953, 1954, 1955 and 1956.

## Response

18. The 1<sup>st</sup> respondent filed a Grounds of Opposition dated 18<sup>th</sup> September 2025 in response to the applicants' application. The basis of the opposition is that the application falls below the threshold for the grant of injunctive orders; that the suit has no chances of success; and that application offends the doctrine of sanctity of title and offends *the Constitution* of Kenya, 2010. The 1<sup>st</sup> respondent also stated that the application is misconceived and defective and that allegations of loss are fanciful and speculative.



## Submissions

19. The application was canvassed by way of written submissions. The respondents did not file their submissions. The 1<sup>st</sup> respondent filed his submissions dated 22<sup>nd</sup> September 2025. He submitted he seeks status quo orders aimed at restricting the 1<sup>st</sup> applicant herein from dealing with the suit property in a manner that interferes with his quiet possession of the suit property pending the hearing and determination of the suit. As such, he submitted that an injunctive relief would help preserve the suit property during the pendency of the suit.
20. The 1<sup>st</sup> applicant relied on *Giella vs. Cassman Brown* [1973] EA 358 to highlight the conditions that must be established for injunctive orders to issue, namely, a prima facie case, irreparable injury that cannot be compensated by way of damages, and if the court is unsure of the first two conditions, a determination of whether the balance of convenience tilts in favour of granting the orders.
21. The 1<sup>st</sup> applicant argued that his application had met the test set out in *Giella V Cassman Brown* as the application raises triable issues which may be settled in his favour. He also added that his ancestors have been buried on the suit property, way before the purported purchase of the land by the 1<sup>st</sup> respondent.
22. In addition to the foregoing, the 1<sup>st</sup> applicant alluded to a customary trust pursuant to section 28 of the [Land Registration Act](#) and added that severance of the ties between his family and their ancestors cannot be compensated by way of damages.
23. The 1<sup>st</sup> applicant maintained that his application is anchored on Order 40 Rule 1 (a) of the Civil Procedure Rules and submitted that he seeks to forestall the alienation of the suit property by the 1<sup>st</sup> respondent, who he submitted, had already sold part of the suit property that had been allocated exclusively allocated to the 2<sup>nd</sup> applicant's family.
24. Reliance was placed on *Suleiman v. Amboseli Resort Ltd* (2004) e KLR 589, *Kamau Muchuha v. Ripples Ltd.* (1993) eKLR and *Charles Mwangi Kamau v. Mohamed Hassan Sheikh Noor* (RIR) HCCC No. 2 of 2005 to advance the argument that the should balance the interests of the parties in determining whether or not to grant an injunction.
25. The 1<sup>st</sup> applicant also relied on Section 26 (1) (a) and (b) of the [Land Registration act](#) to argue that he mere registration of title is not conclusive proof of land ownership.
26. Lastly, the 1<sup>st</sup> applicant reiterated the prayers contained in his application and prayed that the said orders be granted.

## Issues, analysis and determination

27. The issues for determination in this application are twofold: whether the application is merited; and who should bear the costs of the application.
28. The court has analyzed the application in its entirety, the Grounds of Opposition filed by the 1<sup>st</sup> respondent on as well as the submissions on record. The 1<sup>st</sup> applicant prays that this court issues an injunction barring the 1<sup>st</sup> respondent from accessing, advertising, offering for sale, leasing, mortgaging, charging, transferring or assigning, subdividing and/or otherwise dealing with the suit property; L.R. Number Kasipul/kakelo Dudi/28.



29. The law on grant of injunctions is provided for in Order 40 of the Civil Procedure Rules, 2010. Rule 1 thereof provides that:
1. Where in any suit it is proved by affidavit or otherwise—
    - a. that any property in dispute 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
    - 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 other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
30. The principles governing the grant of injunctions were elaborated in *Giella v Cassman Brown* [1973] EA 358, where the court established that party seeking an injunction should fulfil three conditions:
- a. The applicant must establish his case at the prima facie level;
  - b. The applicant should demonstrate that he stands to suffer irreparable harm/injury, which cannot be remedied by way of damages; and
  - c. If the court is in doubt concerning the above two stated conditions, the balance of convenience should tilt in favor of the applicant.
31. The Court of Appeal in *Mrao Limited v the First American Bank of Kenya & 2 others* [2003] KLR 125, at paragraph 17 defined a prima facie case in the following terms:
- “In civil cases it is a case in 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 party as to call for an explanation or rebuttal from the latter”.
32. More importantly, a party need not prove his case so as to established a prima facie case. In *Pius Kichirchir Kogo V Frank Kimeli Tenai* [21018] eKLR, Ombwaya, J noted that “a prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed.”
33. Irreparable injury was defined in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR) as loss that cannot be remedied by way of damages. Similarly, the court in *re estate of Magdalena Kabon Sawe (deceased) Succession Cause E 034 of 2023* [2024] KEHC 9228 (KLR), while placing reliance on the Halsbury’s laws of England and held that:
- “...by irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter.”



34. What constitutes “balance of convenience in favour of the plaintiff” was expounded by the court in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR the court established that:

The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed...

35. The Court of Appeal *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR) clarified that the issue of balance of convenience only arises where there is doubt as the adequacy of the respective damages available to either party, such that the court must balance the inconvenience to either party if an interlocutory injunction is granted or otherwise denied.

36. In the same *Nguruman* decision (*supra*), the Court of Appeal held that the conditions established in *Giella v Cassman Brown* (*supra*) should be surmounted separately and sequentially, and that if, say, a *prima facie* case is not established, the court should not proceed to evaluate the other conditions set out in the test. Thus, the court held that:

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a *prima facie* case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a *prima facie* case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.

37. Going to the limbs of the requirements, as to whether the applicant has established a *prima facie* case, this court has examined the facts presented, the arguments advanced by the 1<sup>st</sup> applicant as well the evidence in his supporting affidavit. This is the point of call because he who alleges proves, as required by Sections 107 and 108 of the *Evidence Act*. The applicant is the one who is to prove on a balance of probabilities.

38. The 1<sup>st</sup> applicant’s case is that this court should grant him orders injunction, since the 1<sup>st</sup> respondent, who is his relative has had the suit property, being Kasipul /Kakelo/Dudi/28 registered in his name. This registration is said to be illegal and aided by the 2<sup>nd</sup> respondent herein.

39. The 1<sup>st</sup> applicant prays that this court grants orders barring the 2<sup>nd</sup> respondent “accessing, advertising, offering for sale, leasing, mortgaging, charging, transferring or assigning, subdividing and/or otherwise dealing with the suit property” in manner that is detrimental to the interests of the applicant.

40. Although the 1<sup>st</sup> applicant has not annexed an authority to plead on behalf of the 2<sup>nd</sup> applicant, he states that the 1<sup>st</sup> respondent has already sold land belonging to the 2<sup>nd</sup> applicant herein. An analysis of the evidence on record does not show any evidence that support the 1<sup>st</sup> applicant’s allegations. The court understands that both applicants and the 1<sup>st</sup> respondent are family members who have been residing on the suit property for some time now, with each allegedly occupying a specific area thereof. The 1<sup>st</sup>



Applicant has not adduced evidence to show any interference on his portion of the parcel of land in issue. He has not demonstrated attempts at selling, leasing, mortgaging, accessing, advertising, or otherwise dealing with the property in a way adverse to the 1<sup>st</sup> applicant.

41. The 1<sup>st</sup> applicant annexed many documents in his supporting affidavit, which, unfortunately do not support his claim that he faces a threat of eviction from his land. All that the court sees from the record is that there is a possible dispute concerning the ownership of the suit land which can be resolved without grant of the injunctive orders sought. Particularly the court has declined this injunction because the applicant has stated that both parties are actually on the land. Thus, if the court were to issue an injunction blanketly it would amount to dispossessing the 1<sup>st</sup> Respondent of the portion he occupies: he is on the suit land, and did not just get into occupation recently but many years back. That would not be fair to the parties.
42. It should be remembered that an injunction is an equitable remedy granted at the discretion of the court. This court in the case *Anthony Bulitia Simiyu & 5 Others V Meave Khalagai & Others* [2022] KEELC 1477 (KLR) determined that:

“12. Times without number it has been restated that the remedy of orders of injunction is an equitable one. Its grant is discretionary in any court. However, the exercise of that discretion should be judicious. This was stated in the case of *Kahoho v Secretary General*, EACJ Application No. 5 of 2012. Additionally, my brother Munyao J. states as much in *Daniel Kipkemoi Siele v Kapsasian Primary School & 2 others* where he stated as follows, “... the grant or not of an order of injunction is upon the discretion of the court. However, like all other discretions, the same must be exercised judiciously.” I need not explain what it means by a Court being judicious but it suffices to say that in so doing it must consider all the facts and circumstances of each case and make a decision that is not plainly wrong. It is a delicately balance of the interests of the parties and justice.”
43. This court notes, there is no need to deliberate on whether the applicants will suffer irreparable loss and whether the balance of convenience tilts in their favour, there being no prima facie case established by the applicants.
44. The upshot of the foregoing is that the application dated 1<sup>st</sup> September 2025 fails.
45. Costs of the application will be borne each of the parties, that is to say, each party to bear own costs. The parties are directed to file trial bundles within the next thirty (30) days. The suit shall be mentioned on 1<sup>st</sup> April 2026, for compliance.
46. Orders accordingly

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM  
THIS 22<sup>ND</sup> DAY OF JANUARY 2026.**

**HON. DR. IUR NYAGAKA**

**JUDGE**

In the presence of,

Mr. Okadia Advocate for the Plaintiffs.

Mr. Bana Advocate for the 1<sup>st</sup> Respondent.

