



Shapaya v Lukhumwa (Administrator of the Estate of Teresina Etambo Lukhumwa) (Environment and Land Case E036 of 2025) [2026] KEELC 295 (KLR) (28 January 2026) (Ruling)

Neutral citation: [2026] KEELC 295 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE E036 OF 2025
A NYUKURI, J
JANUARY 28, 2026**

BETWEEN

RICHARD LOKENI SHAPAYA APPLICANT

AND

TIMOTHY MISANGO LUKHUMWA (ADMINISTRATOR OF THE ESTATE OF TERESINA ETAMBO LUKHUMWA) RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion application dated 15th March 2024 filed by the applicant seeking the following orders:
 - a. Spent.
 - b. Spent.
 - c. That the Honourable Court be pleased to issue an order of injunction restraining the respondent either by himself, his assigns and or representatives from interfering with the applicants use, occupation and developments on his portion of land parcel Number Isukha/ Shirere/535 measuring about 0.218 Ha pending the hearing and determination of this suit.
 - d. That the Honourable court be pleased to issue an order of prohibition prohibiting any transaction on land parcel number Isukha/ Shirere/535 in respect of the portion measuring about 0.218 Ha pending the hearing and determination of this suit
 - e. That costs of this application be provided for.
2. The application is predicated on the supporting affidavit of the applicant sworn on 15th March 2024. The applicant's case is that he purchased a portion of land measuring 0.218 Ha to be hived from parcel



No. Isukha/Shirere/535 form one Teresina Etambo Lukhumwa and took possession of the same. That Teresina died before transferring the land to the applicant. That the respondent upon conducting succession for the deceased, is in the process of transferring the suit property to a third party. That he is in occupation of the suit property. That on 7th March 2024, the Judge in Kakamega Succession Cause No. 914 of 2011 ordered that status quo obtaining on the suit property be maintained pending ruling in respect of the application dated 14th June 2024. That despite those orders, the respondent has interfered with his possession of the suit property and that if the orders sought are not granted, it may result in bloodshed. That the respondent will not suffer prejudice as he has never used the portion owned by the applicant. He attached agreements dated 24th January 1998, 11th April, 1998, 25th July 1998, 1st February 2002 and 16th October 2002 as well as a ruling dated 23rd December 2022 made in Kakamega HC Succession Cause No. 914 of 2011.

3. The respondent filed grounds of opposition dated 21st April 2024. He stated that the application lacked merit, was an abuse of the court process and meant to delay the hearing of the case. That the supporting affidavit contains falsehoods and non-disclosure, and allegations made by the applicant were unsubstantiated and untrue and that there is no evidence that the defendant intends to transfer the suit property. That the respondent is a peaceful Kenyan and it is the applicant who intends to engage in violence.
4. The application was disposed by way of written submissions. On record are submissions filed by both parties in this matter; both of which the court has duly considered.

Analysis and determination

5. The court has carefully considered the application, the response thereto as well as submissions and authorities cited. In my considered view, the issues that arise for this court's determination are:-
 - a. Whether the applicant deserves orders of inhibition, and
 - b. Whether the applicant has met the conditions for grant of temporary injunction pending hearing and determination of this suit.
6. An inhibition is an order inhibiting the registration or any dealings or transaction on a title of land, pending the happening of a particular event or until a further order of court. Section 68 of the [Land Registration Act](#) grants this court the power to make an order of inhibition as follows;

“The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”
7. Therefore, in so far as an inhibition stops the registered owner of land from transacting on their title for some time, it is an order in the nature of a temporary injunction. Order 40 Rule 1 of the Civil Procedure Rules grants this court the jurisdiction to grant temporary injunction where it is shown that the subject matter of the suit is at risk of waste, damage, alienation, disposal or sale in execution of a decree; and that if an injunction is not granted, there would likely be a delay or obstruction in the execution of any decree that may eventually be passed in favour of the plaintiff.
8. To obtain a temporary injunction, it is trite that an applicant must demonstrate that they have a prima facie case with chances of success; that they stand to suffer irreparable loss that may not be compensated in damages and where the court is in doubt, it ought to decide on a balance of convenience. (See *Giella v Cassman Brown* [1973] EA 158).



9. A prima facie case was described in the case of *Mrao Ltd v First American Bank of Kenya and 2 Others* (2003) KLR as follows;

“ A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

10. In the instant case, the application herein is founded on the applicant’s allegation that he has acquired rights over the suit property under the doctrine of adverse possession. He is therefore obligated to demonstrate a prima facie case with chances of success on the question of adverse possession. A claim for land based on the doctrine of adverse possession is anchored on exclusive, hostile, open and possession of the disputed land without permission from the true owner thereof, for a statutory period of 12 years.

11. On the question of a prima facie case, I have considered the supporting affidavit filed by the applicant. Although the applicant alleged that he was in occupation of the suit property, he did not state when the occupation began or when he entered the suit property, and therefore the period of occupation is not ascertainable. In addition, he did not state the manner of his possession or occupation or what he had done on the suit property to constitute or demonstrate exclusive possession. Besides, he did not provide any evidence of occupation. The sale agreements and an order from the Succession court were not evidence of occupation. And lastly, he did not provide a copy of the register to demonstrate that the person against whom he had sought adverse possession, is the registered proprietor of the suit property and or had been registered as such for the entire period of 12 years. In view of the above reasons, I find and hold that the applicants has failed to demonstrate a prima facie case with chances of success. As no prima facie case has been established, the questions of irreparable injury and balance of convenience are now moot and inconsequential and therefore the court will not interrogate them.

12. In the premises, I find and hold that the applicant does not deserve the orders sought. Therefore, the application dated 15th March 2024 lacks merit and the same is hereby dismissed with costs.

13. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 28TH DAY OF JANUARY 2026

A. NYUKURI

JUDGE

In the presence of;

Mr. Orute for the applicant

Mr. Shilisia holding brief for Ms Andia for the respondent

Court Assistant: Delphine

