



Sile & another v Onsembe & another (Environmental and Land Originating Summons E015 of 2024) [2026] KEELC 146 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEELC 146 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E015 OF 2024
MN MWANYALE, J
JANUARY 22, 2026**

BETWEEN

JACOB OLE SILE 1ST APPLICANT

NDISHA BENJAMIN ARUSAT 2ND APPLICANT

AND

JASON ONDORA ONSEMBE 1ST RESPONDENT

THE LAND REGISTRAR KILGORIS SUB COUNTY 2ND RESPONDENT

RULING

1. Coming up for determination is the Notice of motion application dated 2nd December 2024.
2. There has been a delay in prosecuting the application caused by the parties who have endlessly sought for extension of time to file responses. The court had intended to dispose the application initially by way of oral submissions but the Applicants Advocates sought to file written submissions, delayed in filing same and eventually when the court indicated that failure to file submissions would lead to the interim order being vacated, file the same thus enabling the court finalize the writing of this ruling.
3. Prayer number 1,3,4,6 and 7 of the application as drafted are spent, hence the application shall be determined with respect of prayers 2 and 5 thereof which prayers are reproduced herewith for context
 - I. Spent.
 - II. That conservation orders do issue to maintain status quo and accord the Plaintiffs continued occupation and use of the suit property hereof pending the hearing and determination of this suit.
 - III. Spent.
 - IV. Spent.



- V. That pending the hearing and determination of the suit hereof an order of injunction do issue restraining the 1st and 2nd Respondent whether by themselves, their employees, servants and all such persons acting on their behalf or claiming through them, inhibiting any form of alienation dealing and/or in any other manner interfering with the Plaintiffs quiet use, occupation, title, ownership, possession formerly known as Transmara/Moyoi/343.
- VI. Spent.
- VII. Spent.
- VIII. That this honorable court be pleased to make any further orders it may deem fit.
- IX. Costs of the application be provided for
4. In support of the application are ground interalia that;
- i. The plaintiffs have been in occupation of suit property for over 18 years and are pursuing adverse possession claim against the Respondent,
 - ii. That the suit property formally known as Transmara /Moyoi/343 which the Plaintiff claim adverse possession was subdivided into new parcels;
 - iii. That the Plaintiff have been rearing cows estimated value of Kshs.5,000,000/-. Goats valued at Kshs.1,000,000/- on the suit property.
5. In further support of the application is the supporting affidavit of the 1st Applicant Jacob Ole Sile who reiterates the grounds in support of the application in his deposition and alludes having lived on suit property since September 2006, and has annexed photographs of cows, an Mpesa message print out, photographs of crops and cow Boma's and houses. The applicant depones of getting threats from a Mr. Kaipoi, on behalf of the 1st Respondent.
6. The application was opposed initially by the Notice of Preliminary Objection dated 07/01/2025. The said Notice of preliminary objection related to both the originating summons as well as the Application herein.
7. The P/O was disposed off vide the Ruling delivered on 8th May 2025, whereupon its dismissal leave was granted to the Respondents to file a response to the application and corresponding leave to the Applicant to file a further affidavit, if they needed to.
8. In the Replying Affidavit dated 9th June 2025, in opposition to the Notice of motion, the Respondent depones interalia that,
- i. The application is frivolous vexatious and an abuse of the court process, as the issues herein were raised and dismissed in Kilgoris CM succession cause No. E030 of 2023 and High court civil Appeal no. E013/2024.
 - ii. That this suit runs parallel to a probate and Administration appeal filed by the Applicants.
 - iii. That the occupation by the Applicants is not adverse as the Applicant has failed to demonstrate element of adverse possession, as the 1st respondent has been in continuous occupation of suits property from 1989 to 2017, and 2019.
 - iv. That the Applicants have never been in occupation of the suit land and the Applicants entry non permissive entry was from 12/08/2023 to 15/11/2024.



9. The Replying Affidavit made reference to issues before the succession court, which issues were not relevant to the present application but are relevant to the Originating Summons.
10. The Applicant filed a further affidavit deponed on 20th September 2025 with a whopping 42 paragraphs. In essence the Applicant state that the 1st Respondent has never been in occupation of the suit property.
11. The Attorney General appearing for the 2nd Respondent did not file a response to the application and neither did they file submissions as they opted not to participate in the application as well as the decision in the Mwaani Investment Ltd and others as well as Chevron(K) limited vs Harrison Charo wa Shutu (2016) eKLR.

1st Applicant submission.

12. The 1st Applicant's submits that he has acquired adverse possession rights over Tansmara/Moyoi/343, before its subdivision as the Respondent has not produced any evidence to controvert the Plaintiff's claim of adverse possession.
13. The 1st Applicant places reliance on his further affidavit in which he annexed an affidavit from the chief in which the chief depones the 1st Respondent is a stranger.
14. The 1st Applicant further submits having established a prima facie case by demonstrating occupation for more than 12 years, as confirmed by the affidavit of the chief and an affidavit of Mr. Stephen Shira a member of the family of the original owner.
15. The Applicant relies on the previous affidavits of the Chief produced in previous proceedings in the succession cause so as to buttress their occupation of the suit property.
16. The Applicant relies on the decision in the case Kasuve and Another vs Kauli (Land Case E013 of 2022) 2025 KEELC 3257 as well as Chevron(K) limited vs Harrison Charo wa Shutu (2016) eKLR.
17. The Applicant submits that threats to his occupation was reported to the DCI, hence a confirmation of his occupation.
18. The Applicant thus submits that he has established a prima facie case, the status quo order ought to be confirm pending hearing and determination of the suit.

1st Respondents submissions

19. The Respondent submits that no prima facie case has been since the succession court in E030/2023 declared the Respondent as the rightful owner.
20. The Respondent submits that they are existing two parcel proceedings before this court and the High Court in a probate matter arising from an Appeal in respect of the decision rendered in E030/2013.
21. The Respondent further submits that the balance of convenience does not favour the Application and place reliance on Jadomera and Another.
22. The Respondent submits that there are no irreparable damages as there is no harm that the Applicant will suffer, if the orders are not granted.
23. The Respondent thus prays for dismissal of the application.



Issues for Determination

24. Arising from the application, the rival affidavits and submissions, the court frames the following as issues for determination.
- i. Whether or not the proceedings herein are parallel to the proceedings pending in HC Civil Appeal number E030/2023, at Kilgoris High court. Rendering the suit subjudice and the application incompetent?
 - ii. Whether the application has met the criteria for grant of temporary injunction.
 - iii. What reliefs ought to issue?
 - iv. Who bears the cost of the application?

Analysis and determination

25. The first issue framed herein is the jurisdictional issue arising from Replying affidavit of the 1st Respondent vide paragraph 3 and 5 thereof.
26. Although the 1st Respondent did not outrightly plead the issue of subjudice, the court discerns the same from paragraph 3 and 5 of his Replying affidavit as well as submissions.
27. The court shall now answer whether the issue raised in this suit are parallel to the issues raised in HCC Appeal No.E013/2024 which appeal is against the decision in Succession Cause No. E030/2024 where the court had revoked a grant of letters of Administration issued in respect of the Estate of Jason Ondora Onsembe to One Douglas Onsembe Ondora for the reasons that Jason Ondora Onsembe was still alive and no grant could be issued in respect of living person.
28. In the present case, the Applicants have taken out originating summons claiming adverse possession in respect of Transmara/Moyoi/343, which property had been subject to the succession proceeding aforesaid now pending before the High court on Appeal.
29. Are the two proceeding two wit, the appeal before the High court and the originating summons herein parallel, so as to give rise to the issue of subjudice?
30. The answer is a resounding no, as what is before the succession court is an Appeal in relation to revocation of a Grant, however the claim of adverse possession cannot be properly before the succession court as it is a claim of ownership reserved for this court.
31. In arriving at the said conclusion, I am guided by the court of Appeal decision in the case of Diasproperty Limited and others vs Tack Kaguu Githae Civil Appeal No. E157 of 2023, where the court of Appeal as from paragraph 33 to 39 dealt with the interplay between jurisdiction of the ELC court and High court under the *Law of succession Act*. At paragraph 42, the court observed as follows; -
- “In the instant matter, the question of ownership of the 200 acres was not before the succession court, and the succession court could not competently deal with the question because it lacked jurisdiction.....”
32. It follows from the decision above, that there are no parallel proceedings in respect of this matter pending before this court and the High court so as to invite a finding that this matter is subjudice. The answer to issue number 1, is that the suit being a claim of ownership under the doctrine of adverse possession is properly before this court and is not subjudice.



On issue number 2, the principles for grant of a temporary injunction were settled in the case of Giella vs Cassman Brown. The principles are

“Firstly, 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.” while a prima facie was defined in Mrao Limited in the following terms, “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 part so as to call for an explanation or rebuttal from the latter.”

33. Has the Applicant established prima facie case with probability of success?
34. The Applicant has pleaded that he took possession and occupation of Transmara/Moyoi/343 in 2006. He has filed affidavits of likely witnesses to testify to this fact.
35. Being at the interlocutory stages, the court cannot make definite findings on the merits or otherwise of the case, the Applicant has exhibited through photographs herds of cattle and houses allegedly on the suit property.
36. The Respondent did not challenge the photographs.
37. The Applicant has also a letter from the chief David Maseto confirming that the Applicant has been utilizing the parcel from 2007.
38. Given that the claim for adverse possession is yet to be heard and determined, the material placed before court in terms of the annexures and the chief’s letter have established a prima facie case.
39. The court shall look at the other two conditions, in Giella vs Cassman, the Applicant has quantified the value of the herd of cattle and crops in the suit property suggesting that damages would be an appropriate remedy.
40. It is settled law, that where damages would be an appropriate remedy, an injunction would not issue (See Nguruman Limited vs Jan Bonde Nielser and Others).
41. The court finds whereas a prima facie has been established no irreparable loss that cannot be compensated by damages has been proven.
42. It follows that the Applicant is not entitled to an order of injunction as sought having not met the threshold for grant of temporary injunction.
43. The Applicant has however proven to be in possession of the said suit Land, and in order to preserve the said suit land the court hereby confirms the order for maintenance of status quo pending hearing and determination of the case.
44. The status quo to be mean that the Applicant to remain in possession of the suit land but not to undertake any development thereon, and the Register of Transmara/Moyoi/343 or its subdivisions to remain in the names of the current proprietors not to be transferred and/or changed to any third party, pending hearing and determination of the suit.
45. The status quo orders issued above are issued pursuant to practice direction number 28K gazette issued vide gazette Notice number 5178/2014 which empowers court to issue status quo orders so as to preserve suit properly.
46. Cost of the application shall be in the cause.



DATED AT KILGORIS 22ND DAY OF JANUARY 2026

HON. M.N. MWANYALE

JUDGE

In the presence of

CA – Sylvia/Sandra/Clara

Ms. Owino for the 1st Plaintiff

Mr. Ranah for 2nd n 3rd Def/Res

Ms. Mongare for 1st Def/Res.

