

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC OS NO. E005 OF 2024

RODAH JEROTICH NGANGA
PLAINTIFF/APPLICANT

VERSUS

PRISCA CHEPCHIRCHIR LAGAT

(Sued as the Administratrix of the Estate of the late

CHRISTOPHER KIMARU LAGAT) **DEFENDANT/RESPONDENT**

RULING

1. The Plaintiff (hereinafter referred to as **“the Applicant”**) did file a Notice of Motion Application dated 21.05.2024 (hereinafter referred to as **“the present Application”**) against the Defendant (hereinafter referred to as **“the Respondent”**) seeking the following Orders; -
 - a) **THAT this Application be certified urgent and that service be dispensed with in the 1st instance. (SPENT)**
 - b) **THAT an ex-parte Order of Interlocutory Injunction do issue restraining the Respondent from altering the existing boundary or evicting the Applicant from the portion of land measuring 0.9 Acres comprised in land parcel MOI’S BRIDGE BLOCK 2 (TUIYOBEI)/72 pending inter-parties hearing and determination of this Application. (SPENT)**
 - c) **An Order of Interlocutory Injunction do issue restraining the respondent from altering the**

existing boundary or evicting the applicant from that portion of land measuring 0.9 Acres comprised in land parcel MOI'S BRIDGE BLOCK 2 (TUIYOBEI)/72 pending hearing and determination of this suit.

d) Costs be provided for.

2. The grounds in support of the prayers above are contained in the body of the present Application as well as the supporting affidavit attached thereof and can be summarized as follows; -

- i. The Applicant herein is the beneficial owner of a portion of 0.9 acres on the property known as MOI'S BRIDGE BLOCK 2 (TUIYOBEI)/72 (hereinafter referred to as **"the suit property"**).
- ii. The Applicant's occupation on the suit property has been since the year 2002.
- iii. However, on or about 18.05.2024, the Respondent through his agents, or servants and/or Court Bailiffs did visit the property known as MOI'S BRIDGE BLOCK 2 (TUIYOBEI)/72.
- iv. According to the Applicant, she has been in occupation of the suit property since the year 2002 and therefore the Respondent's ownership is now extinguished by operation of law.
- v. The Applicant was therefore of the view that the alteration of the boundary would dispossess her of the suit property and render her claim for adverse possession nugatory.
- vi. In essence, the Applicant sought this Court to grant an Interlocutory Injunction against the Respondent, his agents, employees and or the Court Bailiff from interfering with the Applicant's occupation of the suit

property pending the hearing and determination of the main suit herein.

- vii. In the alternative, the Applicant sought for an Order of Status Quo to be issued pending the hearing and determination of the main suit herein.
 - viii. The Applicant did state that the Respondent would not be prejudiced in any way if the Orders sought herein were granted by this Court.
3. The present Application was duly served on the Respondent herein.
 4. Upon service, the Respondent did oppose the present Application through a Replying Affidavit dated 15.09.2025.
 5. In the Replying Affidavit dated 15.09.2025, the Respondent did rely on the following grounds to oppose the present application; -
 - i. The Respondent did confirm that the property known as MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBELI)/72 is registered in her late husband's name.
 - ii. On the other hand, the Applicant herein was a person known to her as the mother to one SAMMY KIRWOK LAGAT.
 - iii. On or about the year 2018, the Applicant's son known as SAMMY KIRWOK LAGAT did file an Originating summons known as ELDOROT ENVIRONMENT & LAND COURT CASE NO. 182 of 2018 (OS) against the Respondent's husband who is the registered owner of the property known MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBELI)/72 by virtue of Adverse possession.

- iv. Similarly, the Respondent's late husband did also institute a proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 42 OF 2017 seeking to have the Applicant's son SAMMY KIRWOK LAGAT a trespasser and an eviction order to be issued thereof.
- v. The Court then did consolidate the two proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 182 of 2018 (OS) and ELDORET ENVIRONMENT & LAND COURT CASE NO. 42 OF 2017 for hearing and determination.
- vi. The two proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 182 of 2018 (OS) and ELDORET ENVIRONMENT & LAND COURT CASE NO. 42 OF 2017 were indeed heard on merit and a comprehensive Judgement on both matters was delivered on the 20.03.2023.
- vii. According to the Judgement pronounced on the 20.03.2023, the Claim for Adverse possession by the Applicant's son known as SAMMY KIRWOK LAGAT on the property known as MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBEI)/72 was dismissed and the entire property known as MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBEI)/72 was declared to be the property of the Respondent's husband.
- viii. The Applicant's son SAMMY KIRWOK LAGAT being aggrieved by the Judgement pronounced on the 20.03.2023 did file a Notice of Appeal dated 21.03.2023.
- ix. Aggrieved by the said judgment, SAMMY KIRWOK LAGAT (the applicant's son) lodged an appeal vide a Notice of Appeal dated 21.03.2023 together with an Application for Stay of Execution of the Judgement pronounced on the 20.03.2023 pending the hearing and determination of the Appeal before the Court of Appeal.
- x. Unfortunately, the Application for Stay of Execution of the Judgement pronounced on the 20.03.2023 pending the

hearing and determination of the intended Appeal by the Applicant's son SAMMY KIRWOK LAGAT was dismissed thereof.

- xi. The Respondent's husband on the other hand did file an Application for enforcement of the Judgement pronounced on the 20.03.2023 against the Applicant's son SAMMY KIRWOK LAGAT which was allowed and an eviction order issued therein.
 - xii. In essence, the Respondent did state that the present suit and application were filed to frustrate and delay the execution of the eviction orders against the Applicant's son known as SAMMY KIRWOK LAGAT.
 - xiii. It was therefore the Respondent's contention that the present application has been filed to counter the eviction orders issued, and which are still in force and valid.
 - xiv. In fact, the Respondent was of the view that the present suit was Sub-Judice the pending Appeal against the Judgement pronounced on 20.03.2023 and similarly this Court is sitting on Appeal of the Judgement pronounced on the 20.03.2023.
 - xv. The Respondent did plead that this Court had become functus officio as regards ownership of the property known as MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBEI)/72.
 - xvi. In conclusion, the Respondent sought this Court to have the present application dismissed forthwith.
6. The Replying Affidavit dated 15.09.2025 was duly served on the Applicant who did not rebut the facts pleaded therein by filing any Further and/or Supplementary Affidavit thereof.
7. The Court then did direct that the present Application be canvassed by way of written submissions.

8. Based on the above directions, the Applicant did file her submissions on the 08.05.2025 while the Respondent did file her submissions on the 15.09.2025.
9. The Court has duly perused the present Application, the supporting affidavit thereof, the Replying Affidavit and the submissions by both parties and identified the following issues for determination; -

ISSUE NO. 1-DOES THIS COURT HAVE JURISDICTION TO HEAR AND DETERMINE THE PRESENT APPLICATION AND/OR SUIT?

ISSUE NO.2- IF YES, HAS THE APPLICANT SATISFIED THE TERMS AND CONDITIONS OF GRANTING AN ORDER OF INJUNCTION?

ISSUE NO.3- IS THE PRESENT APPLICATION MERITED?

ISSUE NO.4- WHO BEARS THE COST OF THE PRESENT APPLICATION?

10. The Court having identified the above matters for determination, the same will now be discussed herein below.

ISSUE NO. 1-DOES THIS COURT HAVE JURISDICTION TO HEAR AND DETERMINE THE PRESENT APPLICATION AND/OR SUIT?

11. The first issue for determination is whether the Court has the jurisdiction to hear and determine both the present Application and the Originating Summons filed herein.
12. According to the Respondent, the portion in which the Applicant is in occupation of was litigated by her son namely SAMMY KIRWOK LAGAT through the proceeding known ELDORET ENVIRONMENT & LAND COURT CASE NO. 182 of 2018 (OS).

13. At the end of this litigation known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 182 of 2018 (OS), the Applicant's son SAMMY KIRWOK LAGAT's Claim for adverse possession on a portion of the property known as BRIDGE/MOI'S BRIDGE (TUIYOBEI)/72 was dismissed through a Judgement pronounced on the 20.03.2023.
14. In essence therefore, this Court has become functus officio as regards the issue of adverse possession over the portion which was being claimed by the Respondent's son SAMMY KIRWOK LAGAT.
15. The Applicant upon service of the Replying Affidavit dated 15.09.2025 by the Respondent did not file any Supplementary or Further Affidavit to challenge the above allegation.
16. The question that really needs to be answered is where is the Applicant's portion of land measuring 0.9 Acres within the property known as MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBEI)/72.
17. Is it the same portion of land within MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBEI)/72 which was litigated by the Applicant's son SAMMY KIRWOK LAGAT in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 182 of 2018 (OS).
18. The answer to the above question ought to have been answered by the Applicant in her Originating Summons herein or in a Supplementary Affidavit after being served with the Replying Affidavit by the Respondent.
19. Unfortunately, the Applicant did not do so.
20. The Court did take time to peruse the Originating Summons dated 09.04.2024.

21. In particular, the Court draw its attention to Paragraphs 2,3,4,5 and 6 of the Supporting Affidavit sworn on the 09.04.2024.
22. The summary of Paragraph 2,3,4,5 and 6 of the Supporting affidavits is as follows; -
- a) The Applicant herein did admit that SAMMY KIRWOK LAGAT was his son.
 - b) On or about 1998, the son SAMMY KIRWOK LAGAT did purchase a portion of 0.2 Acres of the property known as MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBEI)/72 which was registered in the name of the Respondent's husband.
 - c) Upon purchase of the 0.2 Acres in 1998 by SAMMY KIRWOK LAGAT, the Applicant was settled on the said property by the son.
 - d) Thereafter, the son SAMMY KIRWOK LAGAT did purchase additional portions through various agreements totaling to 0.65 Acres.
 - e) Thereafter, the original portion measuring 0.2 Acres in occupation of the Applicant as well as the 0.65 Acres purchased by the son SAMMY KIRWOK LAGAT totaling to 0.85 Acres was demarcated by a Surveyor and a barbed wire was erected all around it.
23. Based on the above pleading by the Applicant, it is clear that the Applicant herein was in occupation of the portion which had allegedly been purchased and/or acquired by the son SAMMY KIRWOK LAGAT with his permission and/or consent thereof.
24. In fact, this is why when the Court Bailiffs did visit the property known as MOI'S BRIDGE/MOI'S BRIDGE (TUIYOBEI)/72 to implement the Judgement pronounced on

the 20.03.2023, the change in the boundary did affect the Applicant herein.

25. In essence therefore, this Court is of the considered view and finding that the Applicant's suit property in the present suit is one and the same as that of the son known as SAMMY KIRWOK LAGAT which was the subject of litigation in the two proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 182 of 2018 (OS) and ELDORET ENVIRONMENT & LAND COURT CASE NO. 42 OF 2017.
26. Having made this finding hereinabove, this Court is of the view that it does not have jurisdiction to either entertain the present Application and/or the Originating Summons dated 09.04.2024 as the Court became functus officio after the Judgement pronounced on the 20.03.2023.
27. Similarly, the Originating Summons dated 09.04.2024 are Sub-Judice the Appeal pending for determination emanating from the Judgement pronounced on the 20.03.2023 in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 182 of 2018 (OS) and ELDORET ENVIRONMENT & LAND COURT CASE NO. 42 OF 2017.
28. The Court having decided that it is functus officio and the present Originating Summons is Sub-Judice to the pending Appeal originating from the Judgement dated 20.03.2023 emanating from ELDORET ENVIRONMENT & LAND COURT CASE NO. 182 of 2018 (OS) and ELDORET ENVIRONMENT & LAND COURT CASE NO. 42 OF 2017, then the only way forward is to down its pen hereafter.

CONCLUSION

29. In view of the Court's finding that it has no jurisdiction to determine the present Application and the substantive Originating Summons dated 09.04.2024, the Court hereby makes the following Orders; -

A. THE COURT HAVING BEEN SATISFIED THAT THE PORTION OF 0.9 ACRES WHICH IS THE SUBJECT OF THE ORIGINATING SUMMONS DATED 09.04.2024 IS THE SAME PORTION AS THAT LITIGATED BY ONE SAMMY KIRWOK LAGAT IN THE PROCEEDING KNOWN AS ELDORET ELC OS NO. 182 OF 2018, THE COURT HEREBY MAKES A FINDING THAT IT IS FUNCTUS OFFICIO AND LACKS JURISDICTION TO ENTERTAIN BOTH THE ORIGINATING SUMMONS DATED 09.04.2024 AND THE NOTICE OF MOTION DATED 21.05.2024.

B. CONSEQUENTLY, THE ORIGINATING SUMMONS DATED 09.04.2024 AND THE NOTICE OF MOTION DATED 21.05.2024 BE AND ARE HEREBY STRUCK OUT FORTHWITH.

C. THE APPLICANT IS CONDEMNED TO PAY COSTS OF THE PRESENT APPLICATION TO THE RESPONDENT HEREIN.

DATED, SIGNED and DELIVERED in ELDORET this 10TH DAY OF FEBRUARY, 2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: Brian

Counsel for the Applicant: Ms. Isiaho

Counsel for the Respondent: Mr. Kipnyekwei