



REPUBLIC OF KENYA



**Opondo & 2 others (Suing as the Officials and Members of Yasego Society) v
Meron Limited & another (Environmental and Land Originating Summons
E010 of 2024) [2026] KEELC 699 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 699 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2024
OA ANGOTE, J
FEBRUARY 12, 2026**

BETWEEN

**JOHN NEKO OPONDO, PETER NDUNG’U MUTIGA AND STEPHEN OTIENO
OWINO (SUING AS THE OFFICIALS AND MEMBERS OF YASEGO SOCIETY)
& 2 OTHERS & 2 OTHERS PLAINTIFF
SUING AS THE OFFICIALS AND MEMBERS OF YASEGO SOCIETY**

AND

**MERON LIMITED 1ST DEFENDANT
LANGTON INVESTMENTS LIMITED 2ND DEFENDANT**

RULING

1. Before this court for determination is the 2nd Defendant/Applicant’s Notice of Motion application dated 17th November, 2025, brought pursuant to the provisions of Order 40 Rule 7 of the Civil Procedure Rules. It seeks the following reliefs:
 - i. The order of 13th November 2025 be set aside and/or discharged.
 - ii. The Plaintiffs pay the 2nd Defendant the costs of this Application.
2. In support of the Motion, David Mucai Kunyiha, a director of the 2nd Defendant, relied on his Affidavit sworn on the same date, together with his earlier Affidavit dated 12th November, 2025, filed in response to the Plaintiffs’ Motion of 11th November, 2025.
3. It was his deposition in the Affidavits that, on 14th February, 2024, the Plaintiff filed a Motion seeking, inter alia, injunctive orders restraining their eviction from L.R No 28401 (hereinafter the suit property) and that the Motion was heard and dismissed by the court (Oguttu J) on 13th June, 2024, the Plaintiffs having failed to establish a prima facie case with a probability of success.



4. The 2nd Defendant, he stated, subsequently instituted Nairobi ELC No. E139 of 2023, Langton Investment Limited vs Meron Limited, the Chief Land Registrar and the Director of Land Administration, in which several orders were issued and remain in force to wit:
 - a. On 22nd November 2023, the court (Wabwoto J) issued injunctive orders restraining the 1st Defendant, its agents, and all persons acting under its authority from dealing in any manner with the suit property.
 - b. Subsequently, on 18th January, 2024, the court directed the Officer Commanding Station (OCS), Kasarani Police Station, to assist the 2nd Defendant in taking possession of the suit property, which at the time was under the control and possession of the 1st Defendant.
 - c. By a further order issued on 9th February, 2024, the court directed the Nairobi County Police Commander to enforce the injunctive orders of 22nd November, 2023 and to facilitate the 2nd Defendant's taking of possession of the suit property.
5. According to Mr Kunyiha, as advised by Counsel, on 11th June, 2025, the Plaintiffs' Advocate informed the court that a contingent of approximately twenty police officers had allegedly visited the suit property, discharged firearms into the air, and injured one person.
6. On the basis of those allegations, it was deponed, the Plaintiffs sought an order to maintain the status quo, which application was opposed by the Defendants and that by an email dated 3rd June, 2025, his firm had written to the Plaintiffs' counsel cautioning against attempts to obtain ex parte orders to which they were not entitled.
7. The Deponent further averred that on 11th November 2025, the Plaintiffs filed a Motion seeking injunctive orders restraining their eviction from the suit property, alleging that on 10th November, 2025, more than ten police officers from Kasarani Police Station, purportedly acting on a complaint by the 2nd Defendant, had visited the property and ordered the Plaintiffs and their members to vacate by 14th November, 2025.
8. According to Mr Kunyiha, upon making inquiries with all the directors of the 2nd Defendant, he established that none of them had initiated or procured the alleged visits by police officers on 11th June 2025 or 10th November 2025. He further deponed that, for a period exceeding twenty months, the 2nd Defendant has unsuccessfully sought police assistance to enforce the existing court orders, and the narrative of police visits was manufactured by the Plaintiffs in an attempt to obtain orders to which they are not legally entitled.
9. In response to the Motion, the Plaintiffs' secretary, Peter Ndung'u Mutiga, swore a Replying Affidavit on 26th November, 2025. He deponed that the Plaintiffs initiated this lawsuit against the Defendants through an Originating Summons dated 14th February, 2024, seeking inter-alia a declaration that they have acquired ownership of the suit property under the legal doctrine of adverse possession.
10. It was deposed that the Plaintiffs simultaneously filed with the Summons, a Motion in which they had sought injunctive orders against the Defendants pending the hearing and determination of their claim. This court, upon reviewing the said application for injunction, granted ex parte orders, inter alia, restraining the Defendants from evicting the Plaintiffs.
11. Immediately upon being served with the pleadings and orders, it was deposed, the 2nd Defendant filed a Motion dated 28th February, 2024, seeking to set aside the same. The aforesaid Motion, he explained, marked the start of a troubling pattern where each injunction application was almost immediately followed by a request to set aside interim orders granted by this court.



12. Mr Mutiga stated that, by a ruling delivered on 4th April, 2024, the court dismissed the Motion dated 28th February, 2024 with costs. In doing so, the court observed that although every claimant bears the burden of proving their case through credible and plausible evidence in accordance with Sections 107, 108, and 109 of the *Evidence Act*, the material placed before it did not demonstrate that the Plaintiffs' suit amounted to an abuse of the court process.
13. He deponed that the Plaintiffs had approached the court seeking a determination of their claim for adverse possession, and that such invocation of the court's jurisdiction, without more, could not be impugned as improper.
14. According to the Plaintiffs, after dismissing the application to set aside the interim injunctive orders, the court, in its ruling on their Motion for injunction dated 14th February, 2024, dismissed the same; that the dismissal was primarily grounded on two findings: first, that the title of the suit did not reflect the names of the proper officials, and secondly, the photographs annexed to the Supporting Affidavit were not accompanied by a Certificate of Electronic Evidence as required under the *Evidence Act*.
15. It is the Plaintiffs' case that although the court expressed serious doubts, arising from those deficiencies, as to whether the Plaintiff had established a prima facie case, it deliberately refrained from making a definitive determination on that issue.
16. As such, the deponent asserted, it is untrue that the same was dismissed on the basis that no prima facie case had been established and that the defects identified by the court were technical in nature and have since been remedied through the filing of the Amended Originating Summons dated 19th June 2024, which corrected the title of the suit and addressed the issue of electronic evidence.
17. Crucially, he asserted, the court did not order the eviction of the Plaintiffs from the suit property following the dismissal of the injunction motion. He maintains that the 2nd Defendant is now improperly seeking to rely on orders issued in ELC No. E139 of 2023 (Langton Investment Limited vs Meron Limited & Others) to effect the Plaintiffs' eviction, notwithstanding that the Plaintiffs are not parties to that suit.
18. As advised by Counsel, he stated, the question of whether the injunctive orders issued in the present matter conflict with those issued in ELC No. E139 of 2023 is res judicata, having been conclusively determined by this court in its ruling of 4th April, 2024 and that in that ruling, the court held that the application for review was fatally defective for want of proper pleadings; that the injunctive orders issued on 14th February, 2024 did not contradict or conflict with the orders in ELC No. E139 of 2023; and that the Plaintiffs, not being parties to that suit, could not be bound by or prejudiced by orders issued therein.
19. The Deponent reiterated that any attempt to evict the Plaintiffs by invoking orders made in a suit to which they are not parties amounts to an impermissible circumvention of the eviction procedures prescribed under the *Land Act* and that the Motion of 11th November, 2025 for injunctive relief was precipitated by a fresh and imminent threat of eviction, following an alleged visit by more than thirty police officers, who ordered them to vacate the suit property without notice or any court order.
20. Consequently, it was deponed, the Motion is not a renewal of the earlier one, but a fresh application founded on a new cause of action, namely the risk of an imminent, illegal, and forcible eviction. He further deponed that as far back as 3rd June, 2025, they had raised concerns that the 2nd Defendant intended to deploy thugs and rogue police officers to evict the Plaintiffs.
21. According to the deponent, although the 2nd Defendant denied any intention to carry out an illegal eviction when the matter was before court, its Advocates subsequently sent "a chilling and ominous



- email”, asserting that the Plaintiffs had no legal protection against a violent and unlawful eviction following the court’s ruling of 13th June, 2024.
22. The deponent further stated that over 1,000 people reside on the suit property, where they have established homes, businesses, and livelihoods, including farming, livestock keeping, and poultry rearing, and that any forcible eviction would not only destroy livelihoods, but also pose a serious risk of injury or loss of life. In his view, the conduct of the 2nd Defendant and the tenor of the affidavits filed in support of the application demonstrate a clear intention to forcibly and violently evict the Plaintiffs.
 23. He maintained that the only restraint against such eviction is the court orders issued on 13th November 2025, noting that maintaining the status quo would occasion no prejudice to the 2nd Defendant, whereas lifting the orders would expose the Plaintiffs to a real, imminent, and irreversible risk of eviction that would fundamentally alter the suit property and render their adverse possession claim nugatory. He urged that the 2nd Defendant has not met the threshold for setting aside the orders as sought.
 24. In a Further Affidavit dated 1st December 2025, Mr Peter Ndung’u Mutiga, for the Plaintiffs reiterated his earlier assertions. He deponed that the first attempt to unlawfully evict the Plaintiffs from the suit property occurred on 13th February, 2024, when notices were circulated on the property demanding that occupants vacate within seven days. He stated that these notices precipitated the filing of the present suit.
 25. He further explained that, notwithstanding the issuance of injunctive orders by the court, the 2nd Defendant, accompanied by over 100 hired goons, attempted to forcibly evict the Plaintiffs from the suit property. This conduct, which he described as a blatant violation of court orders, led to the filing of a Contempt Motion dated 15th March 2024 against the 2nd Defendant and its associates, which application remains pending before the court.
 26. According to the deponent, a third eviction attempt occurred on 10th November 2025, allegedly involving over 100 armed police officers, but was halted by the court through orders issued on 13th November 2025. He added that a fourth attempt was made on 26th November 2025, again in open defiance of the same court orders.
 27. He contended that these repeated attempts demonstrate the 2nd Defendant’s determination to evict the Plaintiffs despite the express provisions of the *Land Act* on evictions, the subsisting court orders, and the pendency of this suit in which the Plaintiffs claim the property by adverse possession.
 28. None of the parties had filed submissions as at 15th January, 2026.

Analysis and Determination

29. Having considered the Motion and responses, the sole issue that arises for determination is whether the 2nd Defendant/Applicant has established sufficient grounds to warrant the setting aside of the orders issued on 13th November 2025.
30. Vide the present Motion, the 2nd Defendant asks this court to discharge the orders of 13th November, 2025. It is trite that once an order of injunction has been issued, the party against whom it is directed may apply to the court for its variation, discharge, or setting aside. The court’s power in this regard



is expressly provided for under Order 40 of the Civil Procedure Rules. In particular, Order 40 Rule 7 stipulates as follows:

“Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”

31. The above provision does not stipulate the conditions under which an order of injunction may be discharged, varied, or set aside. Courts have however, through caselaw, developed and prescribed conditions to be considered before an injunction is discharged, varied or set aside.
32. In *Troy Medicare Pharmacy Limited vs Equity Bank Kenya Ltd & another* (Commercial Case E016 of 2024) [2025] KEHC 16978 (KLR) (13 November 2025) (Ruling), the court relied on the exposition in *Ochola Kamili Holding Limited vs Guardian Bank Limited* (2018) eKLR thus:

“The court is alive to the fact that interlocutory injunction, being an equitable remedy, would be discharged upon being shown the person’s conduct with respect to matter pertinent to the suit does not meet the approval of the court which granted the orders which is the subject matter and especially where a party upon getting injunction orders sits on the matter and uses the orders to the prejudice of the opponent. The orders of injunction are mainly intended to preserve the subject matter with a view to have expeditious determination but not to oppress another party nor should an injunction be used to economically oppress the other party, or to deny justified repayment of outstanding loan. That once such a post injunction behavior is exposed it would in my view be a ground to discharge an injunction because the order obtained would be an abuse of the purpose for which the injunction was granted. No court would allow its orders to be used to defeat the ends of justice”

33. Similarly, in *Filista Chemaiyo Sosten vs Samson Mutai* (2012) eKLR, the court stated:

“In *James Juma Muchemi & Partners Ltd vs Barclays Bank of Kenya & Another* (Nairobi HCCC No.339 of 2011 (2012) eKLR, my brother Mabeya J, expressed the view that the jurisdiction under Order 40 Rule 7 was discretionary and like in all other discretions, the same must be exercised judiciously although there are no firm rules of law or practice that have been set down. In *Ragui vs Barclays Bank of Kenya*(2002) 1KLR 647, Ringera J stated that:- “It is settled law that if an interlocutory injunction has been obtained by means of misrepresentation or concealment of material facts, the same will on the application of the party aggrieved be discharged”. I think the discretion under Order 40 Rule 7 ought to be sparingly used so as to avoid a situation where it would appear as if the same is being used as a tool for appeal. This is because before issuing the injunction, the court must have been satisfied that it was necessary to grant the same. If it were not satisfied, the court would not have issued the injunction in the first place. However, if the injunction was obtained by concealing facts which if put to the judge in first instance would have affected his judgment on whether or not to give the injunction, then a court can be inclined to vary or vacate the injunction in light of the new facts. So too if the circumstances of the suit have radically changed so that it is no longer necessary to have the injunction.”



34. In the case of Atlas Copco Customer Finance AB vs Polarize Enterprises (2016)eKLR, the court distilled the factors that may be considered when faced with a question of discharge, varying or setting aside of an injunction. The court held as follows:
- “... it is now trite that some of the factors that guide the exercise of the courts' discretion in this area of law are, but not limited to: a) proof that the injunction was obtained by concealment of facts which if presented would have worked against the granting of the injunction; b) a radical change in the circumstances of the suit, such that it is no longer necessary to have the injunction; c) proof that the general conduct of the holder of injunction is such that the court is impelled to discharge the injunction, for instance, where the injunction is being used to intimidate the Defendant or achieve an ulterior purpose; d) proof that the sustenance of the injunction would cause an injustice.”
35. The court is so guided.
36. Vide the present Motion, the 2nd Defendant seeks to set aside the ex-parte injunctive orders issued on 13th November 2025. The impugned orders arose from the Motion dated 11th November 2025, in which the Plaintiff sought, among others, temporary injunctive reliefs restraining the Defendants from interfering with the suit property, including evicting the Plaintiffs therefrom, pending the hearing and determination of the Motion and the suit.
37. Upon considering the Motion at the ex parte stage, the court (Kullow J.) issued the following directions, inter-alia:
- “That pending the hearing of the application, a temporary injunction is hereby issued restraining the respondent by themselves, from selling, transferring, developing or in any manner evicting, removing or demolishing the Applicant's house or structures on L. R. No. 28401, pending hearing and determination of the application.”
38. As aforesaid, vide the present Motion, the 2nd Defendant seeks the setting aside of the ex-parte injunctive orders issued on 13th November 2025. It contends that vide the Ruling of 13th June, 2024, the court dismissed the Plaintiffs' Motion for injunctive orders and discharged the status quo orders. As such, the plea for temporary injunctive orders vide the Motion of 11th November, 2025 is res judicata. On that basis, the Applicant maintains that the court is functus officio on the issue of interim injunctive relief.
39. The 2nd Defendant further relies on the existence of subsisting orders issued in ELC No. E139 of 2023, Langton Investment Limited v Meron Limited, the Chief Land Registrar and the Director of Land Administration, arguing that those orders restrain dealings with the suit property and authorize police assistance to place it in possession.
40. It is contended that the injunctive orders issued on 13th November 2025 contradict and undermine those orders, and that the Plaintiffs have repeatedly invoked allegations of police harassment and imminent eviction as a stratagem to obtain ex parte orders to which they are not entitled.
41. The 2nd Defendant asserts that the narrative of violent police visits has been fabricated, none of the 2nd Defendant's directors having procured the same and that the Plaintiffs have failed to demonstrate any lawful basis for the continuation of the injunctive orders.
42. In opposition, the Plaintiffs contend that the present Motion is misconceived and an abuse of process. They assert that the Motion of 11th November 2025 is not a re-litigation of the earlier injunction



- application, but a fresh application founded on a new and imminent threat of eviction, following alleged police visits on 10th November 2025 and subsequent attempts on 26th November 2025, notwithstanding subsisting court orders.
43. The Plaintiffs emphasize that the court did not order for their eviction in the ruling of 13th June 2024, and that the dismissal of the earlier injunction application was grounded on technical deficiencies, which have since been cured through the filing of an Amended Originating Summons dated 19th June 2024.
 44. The Plaintiffs further submit that reliance on orders issued in ELC No. E139 of 2023 to evict them is legally untenable, as they are not parties to that suit, a position already affirmed by this court in its ruling of 4th April 2024. They argue that any attempt to evict them through the back door violates the Land Act eviction procedures, undermines their pending claim of adverse possession, and exposes over 1,000 residents to the real risk of violent and unlawful eviction.
 45. The court has considered the record. Vide the Motion dated 14th February 2024, the Plaintiffs sought, inter alia, for temporary injunctive orders restraining the Defendants from evicting them, demolishing their structures, or otherwise interfering with their occupation of the suit property pending the hearing and determination of the suit.
 46. It was the Plaintiffs' case in this respect that they and their members had been in open, continuous, and uninterrupted occupation of the suit property for over twelve years, had undertaken substantial residential and commercial developments thereon, and had consequently acquired rights by adverse possession.
 47. They further contended that on 13th February 2024, leaflets attributed to the Defendants were circulated within the suit property telling them to vacate the suit property within seven days failure of which they would be evicted. This intended eviction, they urged, was illegal and contravened Sections 152F and 152G of the Land Act and would further breach their constitutional rights to property.
 48. The court considered the Motion and, vide its determination delivered on 13th June 2024, dismissed the same, having found that the Plaintiffs had not satisfied the threshold for the grant of injunctive relief. The court further discharged the interim status quo orders that had been granted.
 49. On the other hand, the Motion dated 11th November, 2025 seeks temporary injunctive relief restraining the Defendants from evicting or otherwise interfering with the Plaintiffs' occupation of the suit property. The factual basis advanced herein is substantially identical to that relied upon in the earlier Motion dated 14th February 2024, namely alleged long-standing occupation, developments on the suit property, and threatened eviction. Critically, the Plaintiffs did not disclose that this court had already considered and dismissed a similar application on 13th June 2024, and had expressly discharged the interim status quo orders then in force.
 50. The doctrine of res judicata, as codified under Section 7 of the Civil Procedure Act, bars a court from re-litigating matters that have been directly and substantially determined between the same parties by a court of competent jurisdiction. Closely allied to this is the doctrine of functus officio, which holds that once a court has conclusively pronounced itself on an issue, it lacks jurisdiction to reopen or revisit it.
 51. In dismissing the Motion dated 14th February 2024, the court stated thus:

“I entertain grave doubts and reservations as to the competence of the suit; and hence I am unable to return a finding that the suit beforehand discloses a prima facie case with probability of success.



99. Secondly, towards proving and establishing the existence of a prima facie case with probability of success, it was incumbent upon the Applicant to place before the court credible and plausible evidence pertaining to occupation and possession of the suit property. Indeed, in an endeavor to demonstrate occupation and possession of the suit property, the Applicant has annexed a plethora of photographs to the supporting affidavit. [Same are marked as annexure PNM 4]. 100. Be that as it may, I wish to point out that the photographs which have been annexed to the supporting affidavit [details in terms of the preceding paragraphs] have not been accompanied by the requisite electronic certificate in accordance of Section 106B of the *Evidence Act*, Cap 180 Laws of Kenya. In the absence of the mandatory electronic certificate in line with the provisions of Section 106B of the *Evidence Act* [supra] it suffices to point out that the photographs under reference are devoid of probative value. Same are worthless in the eyes of the law.

In a nutshell, it is my humble view that the Applicant herein has failed to demonstrate that same has a prima facie case with probability of success which isa critical ingredient towards the grant of an order of temporary injunction.

....Lastly, the Applicants herein have also relied on a letter written by assistant chief of Roysambu Sublocation which is stated to the administrative unit wherein the suit property is located. Instructively, the letter under reference is intended to demonstrate that the members of the Applicant are residents of the suit property. 105. Other than the letter by the assistant chief Roysambu Sub-location, the Applicant herein has also annexed to the further affidavit letters from Friends Church Quackers and head of Nyamba Kumi, whose import is to demonstrate the facts of occupation of the suit property by members of the Applicant society. 106. However, it is not lost on this court that the authors of the letters under reference have not filed any affidavit on oath to verify the contents of the letters under reference. In this regard, I hold reservation[s] as to the probative value of the letters under reference.

.....In a nutshell, it is my humble view that the Applicant herein has failed to demonstrate that same has a prima facie case with probability of success which isa critical ingredient towards the grant of an order of temporary injunction.”

52. Flowing directly from the foregoing extract, it is evident that the court’s dismissal of the Motion dated 14th February, 2024 was founded on a substantive and carefully reasoned evaluation of both the pleadings and the evidence placed before it. The court unequivocally found that the Plaintiffs had failed to establish a prima facie case with a probability of success, principally due to their inability to adduce admissible and probative evidence of occupation and possession of the suit property.
53. The rejection of the photographic evidence for want of compliance with section 106B of the *Evidence Act*, and the court’s express reservations regarding the evidential value of unverified third-party letters, were not peripheral observations but went to the heart of the Plaintiffs’ claim for interlocutory protection. In those circumstances, the court conclusively determined the Plaintiffs’ entitlement to temporary injunctive relief and declined to grant it.
54. Although the court did not issue an eviction order, such relief not having been sought, the legal consequence of the dismissal of the Motion dated 14th February, 2024 was that no interlocutory injunctive protection remained in force. The subsequent Motion seeking substantially identical



interim reliefs, and brought without candid disclosure of the ruling delivered on 13th June, 2024, was therefore contrary to the doctrines of res judicata and functus officio.

55. With regard to the reliance placed on the orders issued in ELC No. E139 of 2023, the court reiterates its earlier finding, as expressed in the ruling of 4th April, 2024, that those orders were directed against the 1st Defendant in that suit and do not bind the Plaintiffs herein, who are not parties to those proceedings. No material has been placed before the court to warrant a departure from that position.
56. In light of the foregoing, and guided by the settled jurisprudence governing the exercise of discretion under Order 40 Rule 7 of the Civil Procedure Rules, the court is satisfied that the impugned ex parte injunctive orders were obtained in circumstances warranting their discharge.
57. The renewed application does not disclose any new material facts, nor does it demonstrate any radical change in circumstances; instead, it seeks to re-open and re-litigate an issue conclusively determined by this court. The continued subsistence of the injunction would therefore occasion an abuse of the court process and permit the court's equitable jurisdiction to be invoked for an improper purpose. Accordingly, the plea for setting aside the impugned injunctive orders is merited.
58. For those reasons, the Motion dated 17th November, 2025 is found to be merited and the court directs as follows:
 - a. The orders of 13th November 2025 be and are hereby aside and/or discharged.
 - b. The Plaintiffs shall bear the costs of the Motion.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 12TH DAY OF FEBRUARY, 2026.

O. A. ANGOTE

JUDGE

In the presence of:

Mr. Njiru for Mr. Kiragu (SC) for the 2nd Defendant

Mr. Kenyatta for the Plaintiff

Mr. Ndegwa for Mr. Bwire for 1st Defendant

Court Assistant: Tracy

