



**M’Ndegwa v Dishon (Legal Representative of the Estate of Dishon
M’Mbaraca M’Mutea - Deceased) (Environment and Land Case
E016 of 2024) [2025] KEELC 5625 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5625 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE E016 OF 2024**

**BM EBOSO, J
JULY 29, 2025**

BETWEEN

ZACKARY NJIMA M’NDEGWA PLAINTIFF

AND

**FRANCIS MWITI DISHON (LEGAL REPRESENTATIVE OF THE ESTATE OF
DISHON M’MBARACA M’MUTEA - DECEASED) DEFENDANT**

RULING

1. This suit was initiated through an originating summons dated 31/10/2024. Through the originating summons, the plaintiff sought the following verbatim reliefs against the estate of the late Dishon M’Mbaraca M’Mutea:
 - a. A declaration that the plaintiff is and has been occupying the whole land parcel No. Kiamuri “A” 143 which is currently registered in the name of Dishon M’baraca M’mutea (deceased) and that his occupation has been open, public, exclusive, continuous and without interruption all his entire life. [*sic*]
 - b. A declaration that the plaintiff has acquired by the way of adverse possession ownership by the whole parcel measuring 2.6 Ha. [*sic*]
 - c. An order that the defendant do execute a valid instrument of the whole land parcel Kiamuri “A” 143 in favour of the plaintiff and in default the court administrator of this Honourable court be empowered to execute such transfer instrument. [*sic*]
 - d. Costs of this suit and any other relief that the court may deem fit and expedite.
2. Together with the originating summons, the plaintiff brought a notice of motion dated 31/10/2024 in which he sought the following interlocutory reliefs:



- a. Spent
 - b. Spent
 - c. Spent
 - d. An order of temporary injunction restraining the defendant against evicting him, trespassing on, selling, leasing charging or interfering with the his quiet, peaceful, actual and exclusive possession, cultivation, user, development and enjoyment of land parcel number Kiamuri “A” 143;
 - e. An order of inhibition restraining any dealings whatsoever in land parcel number Kiamuri “A” 143 pending the hearing and determination of this suit
 - f. An order providing for costs of the application.
3. The said application is the subject of this ruling. The application was premised on the grounds outlined in the motion and in the applicant’s supporting affidavit dated 31/10/2024 and in the supplementary affidavit dated 13/3/2025. It was canvassed through written submissions dated 13/3/2025, filed by M/ s A.G Riungu & Co. Advocates.
 4. The applicant’s case is that land parcel Kiamuri “A”143 [hereinafter referred to as “the suit land”] is registered in the name of the late Dishon M’Mbaraca M’Mutea [hereinafter referred to as “the deceased”] and that the defendant is the administrator of the estate of the deceased. He [the plaintiff] is the registered proprietor of an adjacent parcel, Kiamuri “A” 115. He contends that he has utilized the suit land since 1968. He was not aware that the suit land was registered in the name of the deceased until early 2024.
 5. The plaintiff states that in early 2024, the deceased’s children started claiming interest in the suit land, adding that they visited his home to ask about the land. He subsequently obtained an official search which revealed that the suit land was registered in the name of the deceased. He thereafter took out a citation against a daughter of the deceased. Later, he learnt that the defendant had been appointed as the administrator of the deceased’s estate. He also learnt that the defendant had applied for a rectification of the grant to include the suit land and have it distributed as part of the free assets of the deceased.
 6. The defendant opposed the application through a replying affidavit dated 13/1/2025 and written submissions dated 28/3/2025. He contended that the applicant had illegally occupied their ancestral land, adding that the plaintiff had however, not developed the land. He stated that the estate became aware of the land and its ground position when he visited the Lands Registry and the Survey Office, adding that they only had the title deed but had no clue of the ground position of the suit land.
 7. The defendant added that the plaintiff had been aware of the ground position of their land but chose to dishonorably hide this fact from them for his selfish reasons. He termed the application an abuse of the process of the court, adding that all the assertions made by the plaintiff were false, dishonest and an attempt to mislead the court. He urged the court to reject the application.
 8. The court has considered the application, the response to the application and the parties’ respective submissions. The key question to be determined in this ruling is whether the application dated 31/10/2024 meets the criteria for grant of an ordinary interlocutory injunction.
 9. The relevant criteria was outlined by the Court of Appeal for East Africa in the case of *Giella v Cassman Brown* (1973) EA 358. First, the applicant is required to demonstrate a *prima facie* case



with a probability of success. Second, the applicant is required to demonstrate that if the plea for an interlocutory injunction is declined, he will stand to suffer damage that may not be adequately indemnifiable through an award of damages. Thirdly, should the court have doubt on either or both of the above, the application is to be determined on the basis of the balance of convenience.

10. Over the years, our superior courts have developed a fourth principle to the effect that, at the stage of disposing the plea for interlocutory injunction, the court should refrain from making conclusive or definitive pronouncements on the key issues in the dispute. The courts have emphasized that definitive and conclusive pronouncements/findings should be reserved for the final disposal of the dispute.
11. Has the applicant demonstrated a *prima facie* case with a probability of success? The Court of Appeal defined a prima facie case in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* as follows:

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case”. It is a case 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.”

12. The applicant’s claim is anchored on the common law and statute law doctrine of adverse possession. He contends that his title to the suit land has crystallized under the doctrine of adverse possession because he has been in adverse possession of the suit land for more than the prescribed minimum period of 12 years. The defendant filed a replying affidavit in which he deposed that the plaintiff/applicant has indeed been in illegal occupation of the suit land, which he termed as their ancestral land. He added that the plaintiff had not developed the land. At this interlocutory stage, the defendant has not controverted the plaintiff’s contention that his adverse possession of the suit land has been for a period of over 12 years.
13. Given the nature of the plaintiff’s claim and taking into account the fact that peaceful, open and illegal occupation of private land by a trespasser is what constitutes adverse possession, and further taking into account the fact that illegal occupation of the suit land by the plaintiff has been admitted by the defendant, the court is satisfied that the plaintiff has demonstrated a prima facie case with a probability of success. He has demonstrated that pending the hearing and disposal of the case, there is a probable interest which could be injured and which should be protected during the pendency of the suit.
14. Are damages an adequate remedy? The plaintiff has indicated that the defendant has moved the succession court to include the suit land in the confirmed grant. He exhibited photographs showing that the suit land is under crop cultivation by him. Taking into account the fact that occupation of the suit land by the defendant was admitted by the plaintiff, uprooting him from the suit land during the pendency of this suit is likely to be a source of irreparable injury. Similarly, the likelihood of distribution of the suit land through succession proceedings during the pendency of this ownership dispute dictates that the suit land be preserved pending determination of the question of alleged crystallization of the plaintiff’s title under the doctrine of adverse possession. The balance of convenience, too, favours preservation of the title and the admitted status quo, pending the hearing and disposal of the suit.
15. For the above reasons, it is the finding of this court that the application dated 31/10/2024 meets the criteria for grant of an ordinary interlocutory injunction. Consequently, the following interlocutory orders are hereby issued in tandem with the interlocutory reliefs that were sought in the application:
 - a. An interlocutory order of inhibition is hereby issued forbidding registration of any dealings in the land register relating to land title number Kiamuri “A”/143 pending the hearing and determination of this suit.



- b. An order of interlocutory injunction is hereby issued restraining the defendant and the estate of the late Dishon M'Mbaraca M'Mutea against evicting the plaintiff from the suit land or selling, leasing or charging the suit land, Kiamuri "A"/143, pending the hearing and determination of this suit.
- c. Unless extended by the court, the above interlocutory orders shall lapse after 12 months.
- d. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 29TH DAY OF JULY, 2025

B M EBOSO [MR]

JUDGE

In the presence of:-

Ms Riungu for the Plaintiff/Applicant

Francis Mwiti Dishon – Defendant in Person

Court Assistant - Tupet

