

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCLOS NO. E009 OF 2025

GEORGE MEKENYE OMARI PLAINTIFF

VERSUS

RONALD NYANGAU ONDIEKI & 3 OTHERS RESPONDENT

RULING

1. This suit was commenced through an Originating Summons filed on 15 October 2025, in which the applicant contends that he has acquired title, through adverse possession, to 0.35 ha of the land parcel West Kitutu/Bogiakumu/1739 which land measures 0.58ha (parcel No. 1739 or the suit land). Together with the Originating Summons, the applicant filed an application dated 13 October 2025, which is an application for injunction, seeking to have the respondents restrained from dealing with the land or interfering with his possession, pending the hearing and determination of the main suit. It is that application which is the subject of this ruling.
2. The applicant's case is that his father, one Sirilus Maiso (Maiso), and the father of the respondents, one Samwel Motiria (Samwel), who are now both deceased, were cousins. Maiso owned the land parcel West Kitutu/Bogiakumu/621 (parcel No. 621), while Samwel, owned the land parcel West Kitutu/Bogiakumu/622 (parcel No. 622). The applicant contends that Samwel sold a part of the land of Maiso, that as a result a dispute ensued, and elders called upon to settle. It is averred that Samwel fled the area and the elders resolved that the applicant occupies part of the land of Samwel, which he did. It is stated that the land parcel No. 622 was subdivided, and the portion that is occupied by the applicant now falls within the land parcel No. 1739. It is further averred that the applicant placed a restriction in the parent land parcel No. 622, pending hearing and determination of a case that he had lodged before the Land Disputes Tribunal, but which restriction was removed on 24 November 2015 after suspension of the tribunal. The applicant contends that he has been in possession for over 40 years and entitled to be registered as proprietor of the portion he occupies by dint of the doctrine of adverse possession. He has annexed to his application a survey report to demonstrate his possession of the land.

3. The 1st respondent filed a replying affidavit to oppose the motion and the Originating Summons. In it, he deposes that his father and the father of the applicant had a dispute over the land in 1950, being the land case No. 175 of 1950, Samwel Motiri v Sirirusi Maiso, at Kuja African Court, and that the case was decided in favour of his father (Samwel) on 13 February 1969. He has annexed the decision but I observe that it is in Ekegusii language which I am unable to comprehend and there is no translation. He has deposed that it was held that the father of the applicant vacates the land but he never did. He avers that in 1971, his father lodged a trespass case against Maiso, and in 1977 he applied for removal of a caution that had been lodged by Maiso. He deposes that in 2004, his father wished to subdivide the land parcel No. 621 but he met resistance from a brother of the applicant, one Charles Karori Mochama (Charles). He deposes that Charles asked for time to relocate but subsequently filed a suit on 8 August 2005 before the Land Disputes Tribunal. He contends that it is mischievous for the applicant to claim adverse possession yet his father and brother have been having wrangles over the land. He deposes that they could not have filed a case of trespass because the case at the Land Disputes Tribunal was pending. He contends that they allowed the applicant's family to use the land because they are blood relatives but they are now abusing that trust, and they have withdrawn the consent allowing the applicant to continue in occupation. He does not think that the applicant has demonstrated a prima facie case with a probability of success. He acknowledges having issued notice dated 25 March 2025 to the applicant to vacate the land.
4. I have taken note of the foregoing together with the submissions of counsel for the applicant and respondent.
5. What I have before me is an application for injunction and I stand guided by the principles laid down in the case of *Giella vs Cassman Brown (1973) EA 358*. One needs to demonstrate a prima facie case with a probability of success; show that he/she stands to suffer loss that may not be compensated by an award of damages; and where the court is in doubt, it will decide the case on a balance of convenience.
6. I have seen the green card of the suit land and it shows that the same is registered in the name of the 1st respondent to hold in trust for the 2nd to 4th respondents. From the material presented, it is common ground that it is the applicant who is in possession of the premises. The applicant has indeed tabled a survey report to show the extent and nature of his occupation. From the report I see that he has houses on the land and that he cultivates it. It is the applicant's case that he has been in possession for over 40 years. That again, is not refuted by the respondent. What the respondent contends is that the parties have been having disputes over the land and therefore it cannot be said that the applicant has been in

quiet possession. It is true that the forefathers of the parties had disputes over the suit land but that appears to have been a long time back. It is mentioned in the reply of the respondent that there was a dispute before the Land Disputes Tribunal between a brother of the applicant and the father of the respondents. It is not very clear to me what may have happened to the case but it would appear that no decision was reached before the Land Disputes Tribunals were rendered defunct following the repeal of the Land Disputes Tribunal Act, by the Land Registration Act, in 2012. If we take 2012 as the base year, then the applicant will have been in possession for more than 12 years to the time of filing suit.

7. I think that the issue of whether or not the possession was peaceful is one that can only be determined after a full hearing of the case and it would be unwise to make a conclusive finding at this stage of the proceedings. What is critical is that that the applicant has demonstrated that he has been in possession and the possession appears to have been of more than 12 years since the repeal of the Land Disputes Tribunal Act.
8. I am persuaded, based on the foregoing, that the applicant has established a prima facie case with a probability of success. I already mentioned that the applicant appears to have houses on the suit land and I am therefore persuaded that if he is evicted at this stage, he stands to suffer loss that may not be made good by an award of damages. I am not in doubt, but if I was, the balance of convenience tilts towards maintaining the status quo, which is that the applicant is in possession.
9. For reasons above, I find merit in this application, and it is hereby allowed. I issue an order of injunction stopping the respondents from interfering with the possession of the applicant in the land parcel West Kitutu/Bogiakumu/1739. I further order the respondents not to enter into any sale, lease, charge, or any other disposition in respect of the suit land. I also issue an order of inhibition, inhibiting the registration of any disposition in the register of the land parcel West Kitutu/Bogiakumu/1739. These orders to subsist until the conclusion of this case.
10. The costs of the application will be costs in the cause.
11. It is so ordered.

DATED AND DELIVERED THIS 11 DAY OF FEBRUARY 2026

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Matara for the applicant

Mr. Orege for the respondents

Court Assistant – Michael Oyuko