



**Ambajo v Onyalo & another (Environment and Land Case
E048 of 2025) [2026] KEELC 1355 (KLR) (10 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1355 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIIAYA
ENVIRONMENT AND LAND CASE E048 OF 2025**

AE DENA, J

MARCH 10, 2026

BETWEEN

WILLIAM ODHIAMBO AMBAJO APPLICANT

AND

MOSES ATANDA ONYALO 1ST RESPONDENT

THE ESTATE OF SAMUEL AOL ARARA 2ND RESPONDENT

RULING

1. The subject of this ruling is the notice of Motion Application dated 4/12/2025 seeking the following verbatim orders; -
 1. Spent
 2. That an interim order of temporary injunction be and is hereby issued restraining the 1st and 2nd Respondents, their administrators, family members, agents, servants, relatives, hirelings, labourers, or any other person claiming through, under, or in concert with them, from interring or burying the body of the late Samuel Aol Arara, digging or excavating any grave, erecting tents, chairs, canopies, memorials, or any structure whatsoever, entering upon, trespassing on, occupying, remaining on, or in any manner interfering with the Applicants quiet possession, use, and enjoyment of ALL THAT piece or parcel of land known as Land Reference No. East Gem/Anyiko/944 situate in Siaya County, pending the inter-partes hearing of this application.
 3. That an interim order of temporary injunction be and is hereby issued restraining the 1st and 2nd Respondents, their administrators, family members, agents, servants, relatives, hirelings, labourers, or any other person claiming through, under, or in concert with them, from interring or burying the body of the late Samuel Aol Arara, digging or excavating any grave, erecting tents, chairs, canopies, memorials, or any structure whatsoever, entering upon,



trespassing on, occupying, remaining on, or in any manner interfering with the Applicants quiet possession, use, and enjoyment of ALL THAT piece or parcel of land known as Land Reference No. East Gem/Anyiko/944 situate in Siaya County, pending the inter-partes hearing and final determination of the main suit.

4. That an order be issued directing the Officer Commanding Station (OCS), Yala Police Station, to provide security and enforce these orders and ensure that no burial takes place on the suit land pending further orders of this Honourable Court.
5. THAT costs of this application be provided for.
2. The application is premised on the grounds on its face and the supporting affidavit of William Odhiambo Ombajo sworn on 4/12/2025. The applicant avers he is the absolute proprietor of the Land Reference No. East Gem/Anyiko/944 (suit property) having purchased it from Samuel Aol Arara who is now deceased. A copy of the title is annexed. That the title is indefeasible by dint of sections 24,25,26 of the Land Registration Act 2012 and overrides any claim by the deceased or his estate. That prior to his death the applicant had served Samuel with a notice of eviction pursuant to section 152E of the Land Act 2012 pursuant to which he was in the process of moving out of the suit property. That although the notice period had not yet expired as the time of the death the same remains valid and binding on his estate and family and clearly communicated that the deceased had no lawful right to remain on or deal with the suit land.
3. The deponent states that Samuel died on 3/12/2025 and burial had been set for 5/12/2025 on the suit property despite the family being fully aware of the Applicants registration as proprietor and the pending eviction notice. That this action will permanently encumber the land create a false impression of customary entitlement and frustrate the indefeasible title. That once the body is interred the character of the land will be irreversible altered causing him irreparable harm that cannot be compensated. It is deponed that the balance of convenience tilts in granting the orders as there exists alternative burial sites

Replying Affidavit

4. The application is opposed through the replying affidavit of affidavit of Moses Atanda Onyalo the 1st Defendant. The respondent states he is the son of the deceased brother thus a nephew to the deceased. It is deponed that his uncle only sold a portion of the land to the Applicant in late 2009. That it was agreed that both would live in the land occupying their portions and due to the deceased age and the fact that he was living alone the plaintiff would at the same time be assisting him by taking care of his basic needs. Further that the title was given to the plaintiff to facilitate subdivision as the deceased was incapacitated due to ill health but the plaintiff contrary to the agreement registered the entire suit property into his name without the consent of the deceased.
5. It is deponed that upon this discovery the deceased through the chief Yala township reported the issue to the Land Registrar and restriction was registered against further dealings which was in place as at the date of Samuel death. A copy of the green card confirming the restriction as at 5/12/2025 is attached. Due to the deceased efforts to recover his land the plaintiff became very hostile issuing threats which were reported to Yala police station. Further that there had been efforts to resolve the issue and the deceased has consistently maintained he did not sell his entire land but a portion. While the plaintiff was asked to proceed with subdivision in tandem with the agreement he refused to do so. That the registration of the plaintiff as the proprietor is tainted with illegality and fraud. That the deceased ought to be buried on the portion he was occupying at the time of his death. That it is not in the interest of justice that the body continues to stay in the morgue incurring charges that will make the funeral



unnecessarily costly including emotional and cultural prejudice. The application has been brought in bad faith to delay the burial and exert undue pressure on his family. The prejudice and hardship to the family outweighs the applicant's inconvenience.

Further replying Affidavit

6. In response to the above averments the applicant filed a further affidavit sworn on 5/02/2026 denying the existence of an agreement retaining a portion for the deceased. That the replying affidavit raises no triable issue or prima facie case with probability of success. That the balance of convenience favours maintenance of status quo. The threats of violence are denied. That the morgue charges do not outweigh the prejudice to the applicant proprietary rights

Submissions

7. The application was heard by way of written submissions. The applicants submissions are dated 10th February 2026 and the Respondents 9/03/2026.

Analysis And Determination

8. I have read the affidavits sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions of the learned counsels appearing.
9. The main issue for determination is whether the orders sought by the applicant should be granted.
10. The application seeks orders of injunction against the defendant from interring the remains of the deceased on the suit property. It is brought under the provisions of order 40 Rule 1,2 and 4 of the Civil Procedure rules and rightly so.
11. The law governing the granting of interlocutory injunction is set out under order 40(1) (a) and (b) of the Civil Procedure Rules 2010 which provides that: -

 “Where in any suit it is proved by affidavit or otherwise—
 - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or [Rev. 2012] Civil Procedure CAP. 21 [Subsidiary] C17 – 165;
 - b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further.”
12. The test for granting of an interlocutory injunction was considered in the American Cyanamid Co. v Ethicom Limited (1975) A AER 504 where three elements were noted to be of great importance. There must be a serious/fair issue to be tried, damages are not an adequate remedy and the balance of convenience lies in favour of granting or refusing the application. These echo the principles in Giella Versus Cassman Brown & Co Ltd 1793 EA 358.



13. What is a prima facie case was illustrated in Civil Appeal No. 77 of 2012, Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR where the court delivered itself as hereunder; -

“We reiterate that in considering whether or not a prima facie case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the Court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The Applicant need not establish title, it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant’s case is more likely than not to ultimately succeed.”

14. The applicant has produced a title to the suit property registered in his name as proprietor on 23rd July 2009. An eviction Notice to assert the plaintiff rights has also been adduced which though had not expired by the time of the deceased death could not be enforced before the expiry.
15. On the other had the Respondent while not denying the agreements between the deceased and the plaintiff but that the same was just for a portion. He has also led evidence to show that the dispute has been protracted without resolution. He also alleges the registration of the Plaintiff as proprietor was fraudulent. The question of whether the title was issued fraudulently can only be fully determined upon the matter being set down for hearing. Several issues have also been raised that need the interrogation of the court whether there was fraud in transfer of the suit property to the Plaintiff.
16. The existence of the title in the name of the Plaintiff in my view demonstrates there exists a right of ownership by the applicant over the suit property which is threatened by the burial though the same has been contested but which ought to be protected pending the full determination of its authenticity.
17. It this court’s finding that the applicant has established a prima facie case.
18. On the balance of convenience the court is guided by the holding in Amir Suleiman v Amboseli Resort Limited [2004] eKLR, where Ojwang J. emphasised that the Court in responding to prayers for interlocutory injunctive reliefs, should always opt for the lower rather than the higher risk of injustice.
19. In Kenya we live in culture where a burial of a person in the land is best undertaken where he belongs. The Respondent has deponed extensively that he has been fully aware of the dispute herein including the Notice of Eviction. This in my view ought to have served as a pointer to such a dispute emerging in future and which has emerged. To insist on the burial before the issue is resolved is not the best approach to take in the circumstances. While it is submitted by the applicant that burial is an irreversible act and which I disagree for the reason that a body can be exhumed. It is the emotional and cultural underpinnings that go with it which are not pleasant especially where there has been bad blood with the deceased. For me it is best that the deceased should completely rest where he should once the rights are determined.
20. While I have noted the respondent’s submission on the charges accruing at the morgue this can be compensated should they be successful.



21. I find that in the circumstances of this case issuance of injunctive orders will be a lower risk of injustice as compared to failure to grant the same.
22. The application dated 4/12/2025 is hereby allowed in the following terms; -
 1. That an interim order of injunction be and is hereby issued restraining the 1st and 2nd Respondents, their administrators, family members, agents, servants, relatives, hirelings, labourers, or any other person claiming through, under, or in concert with them, from interring or burying the body of the late Samuel Aol Arara, digging or excavating any grave, erecting tents, chairs, canopies, memorials, or any structure whatsoever, on the piece or parcel of land known as Land Reference No. East Gem/Anyiko/944 situate in Siaya County, pending the final determination of the main suit.
 2. That an order be issued directing the Officer Commanding Station (OCS), Yala Police Station, to provide security and ensure that no burial takes place on the suit land pending further orders of this Honourable Court.
 3. That costs of this application shall abide the outcome of the main suit.
 4. That this suit shall be heard on priority basis upon parties complying with Order 11 of the Civil Procedure Rules.

DATED AT SIAYA THIS 10TH DAY OF MARCH 2026

HON. JUSTICE A. E. DENA

JUDGE

10/03/2026

**JUDGEMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Ms Ayere Holding Brief for Ms. Onyango for 1st respondent

Mr. Nichola Karanja for Applicant

Court assistant: Ishmael Orwa

