



**Maina v Chome & another (Environment and Land Case
E076 of 2024) [2026] KEELC 1309 (KLR) (2 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1309 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E076 OF 2024**

FM NJOROGE, J

MARCH 2, 2026

BETWEEN

MICHAEL NDEIH MAINA PLAINTIFF

AND

MURISA KAFASI CHOME & ANOTHER DEFENDANT

RULING

1. The Notice of Motion dated 19th July 2024 is seeking an injunction to restrain the defendants from in any manner interfering with the property known as Gede/ Mijomboni/578 (hereinafter also referred to as “the suit land”) pending the hearing and determination of the suit. The motion is supported by the sworn affidavit of the plaintiff.
2. The grounds upon which the motion has been brought are as follows:the plaintiff is the lawful and registered owner of the suit land; that the land was previously owned by one Katana Charo before it was transferred to one Daniel Kinyua Irungu and subsequently to the plaintiff; that in 1975 the then owner of the property Katana Charo allowed the defendants’ father to reside on the property as the caretaker thereof; after the transfer of the suit land to the plaintiff, he benevolently allowed the defendants to stay on the land in return for their caretaker services thereon and consistently supervised them. Later on, the plaintiff needed to occupy his land and offered the defendants a portion of the land in order to secure peaceful co-existence between them, but the defendants refused and claimed that the entire parcel belonged to them. Mediation by the Provincial Administration officers were unfruitful and the plaintiff issued an eviction notice to the defendants, who then refused to vacate the suit land.
3. The application is opposed through the affidavit of the first defendant sworn with the authority of the second defendant on behalf of both defendants dated that 30th September 2024. In that affidavit, the defendants have admitted that the plaintiff is the registered owner of the suit land, but they also aver that they have been in occupation thereof for a long period; that before the year 1985 when adjudication took place in the Gede/Mijomboni area, they were still in occupation of the property.



They deny that they have occupied the property under license of the plaintiff. The first defendant avers that he has been brought up on the suit property and that he has interred his deceased kin on the suit property. The defendants state that they are still in occupation and possession of the suit property and that the plaintiff has never been in occupation of the same; that issuance of injunctive orders would amount to an eviction before they have been heard. They claim that they have filed a claim of adverse possession against the applicant and attach a copy of a pleading to their replying affidavit being a copy of an originating summons. The aver that the Plaintiff is not deserving of the orders sought.

4. The application before me was held in limbo as this matter was referred for mediation on 2nd April 2025 but by 30th October 2025, mediation had not yielded fruit and the application was revived for hearing.
5. The defendants also filed a preliminary objection dated 13th November 2024 on the basis of limitation, claiming that the plaintiff's suit offends the provisions of Section 7 of the Limitation of actions Act Cap 22.
6. The application and the preliminary objection were disposed of by way of written submissions which both parties filed.
7. A preliminary objection is raised on the basis that all the facts as pleaded by the parties are correct and none of them is controverted. That was the holding in the celebrated case of Mukisa Biscuit Manufacturing Company Limited Versus West And Distributors Limited 1969 EA 696. However, that is not the case in this suit. The plaintiff has given a narrative of what happened since 1975. It is the plaintiff's claim that the defendants are in occupation of the suit property with his permission, which claim the defendants the vehemently deny. In the circumstances there is need to investigate at the hearing whether there was such license granted to the defendants and when the license expired, if at all, in order to determine the objection of limitation in addition to making the defendants' stay on suit premises adverse to the plaintiff's title. This court does not therefore need to investigate at this point by way of any preliminary objection as to whether the plaintiff's claim is time barred under the provisions of Section 7 of the Limitation of Actions Act as the objection, being exposed as one needing evidence to support it, does not amount to a preliminary objection. The upshot of the foregoing is that the preliminary objection dated 13th November 2024 does not meet the threshold of a preliminary objection so-called and it is for dismissal.
8. Regarding the merits of the Notice of Motion application, this court has observed that the plaintiff has title to the suit land. However, the defendants are in occupation thereof, albeit it is in controversy as to whether such occupation is with or without the consent of the plaintiff. This controversy requires to be investigated by this court. On the totality of the evidence produced so far before this court I find that the plaintiff has established a prima facie case. However, regarding the issue of irreparable injury, I find that it is doubtful that there is real risk that the defendants will be able to dispose of the suit property to which they do not have any title.
9. In the light or the foregoing, I find that the safest cause of action by this court is to preserve the suit property pending the hearing and determination of the suit. I therefore dispose of the preliminary objection dated 13th November 2024 and the Notice of Motion application dated 19th July 2024 as follows:
 - a. The preliminary objection dated 13th November 2024 is hereby dismissed with costs;
 - b. The application dated 19th July 2024 is granted to the extent that the prevailing status quo of the suit land shall be maintained as it is by the parties herein pending the hearing and determination of the main suit;



- c. The costs of the application shall be in the cause;
- d. The Plaintiff shall file his trial bundle within 21 days from today and the defendants shall file their trial bundle within 21 days from the expiry or the period granted to the plaintiff to file his bundle and this matter shall be mentioned on 28th May 2026 for issuance of a hearing date.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 2ND DAY OF MARCH 2026.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**

