

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITUI

ELC CASE NO. E001 OF 2024 (O.S)

**APOLLO MUTISYA MUINDE PLAINTIFF/
APPLICANT**

VERSUS

**ERIC MBITHI MALINGA 1ST DEFENDANT/
RESPONDENT**

**PHILIP MAITHYA MALINGA 2ND
DEFENDANT/RESPONDENT**

RULING

1. By a notice of motion dated 11/2/2025 filed in court on the same date, the applicant - APOLLO MUTISYA MUINDE - is asking for various orders against the respondents - ERIC MBITHI MALINGA and PHILIP MAITHYA MALINGA - from who he is claiming ownership of land parcels No.'s MULANGO/WIKILILYE/2712 and MULANGO/WIKILILYE/2713 ("*disputed land*" hereafter). In the main however, the applicant is seeking an order of maintenance of status quo. The application is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3,

3A and 63 (e) of the Civil Procedure Act (Cap 21) and all other enabling provisions of law.

2. More precisely, the application came with three (3) prayers but prayer 1 is now moot as it was meant for an earlier stage. The remaining prayers are two – prayers 2 and 3 – and they are as follows:

Prayer 2: That this honourable court be pleased to issue an order for status quo to be maintained (keep the situations as it exists) – that is to say, there shall be no interference with the plaintiff’s quiet possession and occupation of the suit land, to wit, Title No’s. MULANGO/WIKILILYE/2712 and MULANGO/WIKILILYE/2713 while the defendants as registered owners are directed not to transfer or in any way change the ownership records at the Lands Registry – Kitui pending the hearing and determination of the main suit herein.

Prayer 3: Costs of this application be costs in the cause.

3. The applicant has stated his reasons for filing the application which include that he has been in uninterrupted physical occupation of the disputed land for twenty-four (24) years and that the respondents, despite knowing this, have been using police to harass him; that the same respondents have been trying to dislodge a caution placed by him on the Land

Register at the Land Registry; and that the order of the maintenance of status quo as sought will not prejudice the respondents.

4. The applicant urged the court to grant the status quo order so that the substratum of the suit can be preserved.
5. The respondents responded to the application via a replying affidavit dated 17/2/2025. In it, the applicant's application was said to be full of falsehoods and devoid of good faith. Noting that the applicant talked of purchasing the disputed land sometime in the past, the respondents denied knowledge of such purchase and denied knowing the disputed land as plot No; 110 as the applicant stated it to be at the time of the alleged purchase. A history was given of the various changes that the disputed land has had in terms of ownership and official identity until it became Mulango/Wikililye/2712 and Mulango/Wikililye/2713 owned by them.
6. Occupation of the disputed land by the applicant was also denied and the applicant was said to be hell bent on preventing the respondents from enjoying quiet possession hoping that by so doing he will succeed in stealing a match on them before this court.

7. The application was canvassed by way of written submissions.

The applicant's submissions are dated 28/3/2025. The submissions started with a highlight of facts. According to the applicant the respondents are the registered owners of the disputed land but he himself has been having "*uninterrupted exclusive physical occupation of it for a continuous period of 24 years which is more than the twelve (12) years required by the statute.*" The applicant stated there was an understanding that once succession proceedings in respect of the respondents' mother estate were concluded, the respondents would transfer the disputed land to him. But the respondents apparently had a change of heart or mind and would wish to keep the disputed land for themselves or transfer it to third parties. To forestall this adverse scenario, the applicant therefore wants an order for maintenance of status quo to last for the duration or pendency of the matter in court.

8. The court was implored to grant the order. It was pointed out that such order can even be made by the court of its own volition in exercise of its general direction or can be granted on application of either side for the purpose of preserving the

subject matter, or even for case management reasons. Granting the order is aimed at preventing prejudice from being visited on either party. The order was said to be different from an order of injunction and the principles applicable to granting of injunctive orders were said not to be applicable. Further, the applicant submitted that it is necessary for the court to make clear the state of affairs to be preserved.

9. The applicant's position is that he needs protection of the court. He submitted that he *"has adequately demonstrated that he has an arguable case"* and that he has *"laid down the basis for the grant of the orders sought."*

10. To drive home the points made, the applicant cited and quoted the cases of **Thugi River Estate Limited & Another -vs- National Bank of Kenya Limited & 3 others [2015] eKLR, Kenya Airline Pilots Association (KALPA) -vs- Co-operative Bank of Kenya Limited & Another [2020] eKLR, Northwest Capital Apartments Limited -vs- Ohuru: Environment & Land Case E 213 of 2023 [2024] KEE LC 1181 (KLR) (5 March 2024) (Ruling) Fatuma Abdi Jillo -vs- Kuro Lengesen &**

Another [2021] ECLR, and Mugah -vs- Kunga [1988]

KLR 748, among others.

11. The respondents' submissions are dated 15/5/2025. The submissions started with a brief overview of both the application and the response filed. The respondents then denied the applicant's averment that he possesses the disputed land. The applicant has allegedly never been in possession and he only encroached recently with the help of "goons" and the encroachment was aimed at building this case itself. The applicant's allegation that he has been in uninterrupted physical possession was termed as "*wishful thinking*" and the court was urged to exercise caution so that it is not used by the applicant to achieve his "*false narrative*."
12. The concluding remarks by the respondents are that the applicant has not demonstrated to the court "*any just cause why the court should issue status quo orders*." The applicant was said to be trying to get a chance to get into the disputed land and assert ownership.
13. Ultimately the court was urged to dismiss the application and award costs to the respondents.

14. The applicant filed a supplementary set of submissions in response to the respondents' submissions. That set is dated 6/10/2025 and it emphasizes, in the main, that the applicant is in physical possession of the disputed land.

15. I have considered the application, the response to it, rival submissions, and the entire case as filed generally. It is common ground that the respondents are the registered owners of the disputed land. But it is a disputed point whether the applicant is in possession or not. The respondents would wish the court to believe that the applicant is not in possession. But they also alleged that he has encroached upon the disputed land has even fenced it. They have not shown that the applicant has ceased the alleged encroachment. Of importance to appreciate is that the respondents are said to have reported the applicant to the police for the offence of forcible detainer. This kind of offence is usually made in reference to a person who is already on the land and/or is using the land without permission of the factual or registered owner. From all this, it appears to me more likely than unlikely that the applicant is in possession or physical control of the disputed land.

16. The law on status quo is as generally articulated by the applicant. Usually, the order is meant to prevent change to the subject matter until a final decision is made. The aim generally is to ensure that the final decision remains effective and meaningful. In **TSS Spinning & Weaving Company Limited -vs- NIC Bank Limited & Another: [2020] eKLR** the court captured the purpose to be served by an order of status quo as follows:

“In essence therefore, a status quo order is meant to preserve the subject matter as it is existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention.”

17. Further, in Kenya Airline Pilots Association (KALPA) (supra) which the applicant cited, it is clear that by granting an order of status quo the court’s predisposing concern is to preserve the substratum of the subject matter so as to ensure that it is not radically changed. It also aims at preventing prejudice to the party who has applied for the order so that should the decision of the court be ultimately in his favour, it can be

effectively implemented or executed. This is the same position one gets from the case of *Mugah* (supra), again cited and quoted the applicant, where it was observed thus:

“Status Quo Orders should always be issued for purposes of preserving the subject matter.”

18. In the submissions filed by the applicant, it is emphasized that the threshold for granting an order of status quo is different from that of granting an interim or temporary injunction. While that is largely true, it is important to appreciate that in purpose, purport, import and/or effect, the two are not mutually exclusive. An order of maintenance of status quo sometimes serves an injunctive purpose and is in fact meant to serve such purpose in the matter at hand.

19. On the other hand, an order of injunction is often granted to preserve the subject matter pending the hearing and determination of the action. This is for instance what happened in the case of **Otieno -vs- Ougo (No. 2) (1987) KLR 400** where a temporary injunction was granted at the pre-hearing stage of the suit to preserve the subject matter. The effect was that there was maintenance of the status quo pending determination of the matter that was before court.

20. In the matter at hand, it is fairly clear to me that the applicant is genuinely apprehensive that the respondents might engage in acts that may prejudice him. They are the registered owners and they view the applicant as somebody who is unjustifiably interfering with their ownership rights. The applicant on the other hand believes he is the rightful owner of the land by dint of initial purchase followed thereafter by long uninterrupted possession.

21. In my view, it is necessary to preserve the current state of affairs, which I understand to be that the disputed land is already fenced by the applicant and that the applicant is in physical control of it. The order as sought by the applicant is a suitable one as it seeks also to prevent transfer of all the disputed land to other parties. The respondents have not shown that they have any activity going on the disputed land. The status quo is also that the respondents are the registered owners. They should remain as such and the applicant should not interfere until the outcome of this suit.

22. Ultimately, my finding is that the merits of the application have been demonstrated and I allow it in terms of prayers 2 and 3.

RULING DATED, SIGNED and DELIVERED in open court at
KITUI this **26TH day** of **FEBRUARY, 2026**.

In the presence of,

Court Assistant - Musyoki

Muinde Apollo for M/s Ngige for the applicant

M/s Muatha G. for respondents

A. KANIARU

JUDGE - ENVIRONMENT & LAND COURT, KITUI