



**Simwa v Ange'lei & 3 others (Enviromental and Land Originating Summons E019 of 2025) [2026] KEELC 1606 (KLR) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1606 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E019 OF 2025**

**CK NZILI, J**

**MARCH 18, 2026**

**N THE MATTER OF AN APPLICATION FOR AN  
ORDER THAT PARCEL OF LAND FORMERLY  
KNOWN AS L.R. NO. TRANS NZOIA/KAISAGAT/247  
MEASURING 5.728 HECTARES, WHICH WAS A  
SUBDIVISION OF L.R. NO. TRANS  
NZOIA/KAISAGAT/201 HAS BEEN ACQUIRED BY  
WAY OF ADVERSE POSSESSION BY CHRISTINE  
ARITAH SIMWA**

**BETWEEN**

**CHRISTINE ARITAH SIMWA ..... APPLICANT**

**AND**

**ROBERT LOBUR ANGE'LEI ..... 1<sup>ST</sup> RESPONDENT**

**GEDION LOITALIM ANGE'LEI ..... 2<sup>ND</sup> RESPONDENT**

**JOSHUA LONYANMAN ANGE'LEI ..... 3<sup>RD</sup> RESPONDENT**

**ALLAN EGILALE ANGE'LEI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Through a notice of motion dated 8/10/2025, the applicant in the originating summons dated 8/10/2025, seeks a temporary injunction restraining the respondents, either by themselves, agents, employees, employers, and any other person, from interfering with constructing on, disposing of, entering into, alienating, and or dealing with Land Parcel No. Trans Nzoia/Kaisagat/247, which is a



- resultant subdivision of L.R. No. Trans Nzoia/Kaisagat/201, pending hearing and determination of this suit.
2. The grounds are set out on the face of the application and in a supporting affidavit of Christine Aritah Simwa, sworn on 8/10/2025. The applicant deposes that in 1992, her husband bought from the late Nancy Mabwa a portion of L.R. No. Trans Nzoia/Kaisagat/201 measuring 5.728 Ha, took vacant possession and proceeded to erect a matrimonial home, planted commercial trees, grew crops, and reared cattle, with the consent and authority of the settler as per photos annexed as CAM-(1), pages 5-55.
  3. The applicant deposes that in 2017, they formalised the sale and transfer to her name through transmission as per copies of the title deed attached as annexure marked CAM-(1), pages 1-4. The applicant deposes that through succession proceedings, three beneficiaries of the estate of the deceased seller were allocated part of the original land title as per copies of the grant and the confirmation dated 6/10/2010 and 25/11/2011, attached as CAM-(1), pages 56-57.
  4. The applicant deposes that in 2019, she received information that her land was being claimed by respondents as theirs pursuant to a judgment and decree in Kitale ELC No. 87 of 2015, was on sale, whereof the police and unknown individuals visited it for purposes of viewing and selling the land to which she visited the lands office and established that her title deed had been cancelled pursuant to Kitale ELC No. 118 of 2015 consolidated with Kitale ELC No. 87 of 2015, as per copies of pleadings and judgment attached as CAM-(1), pages 58 to 126, yet she was not a party to the two suits, despite being the occupant and a registered owner since 1992.
  5. The applicant deposes that the two judgments were the subject of the Court of Appeal, Eldoret, Civil Appeal No. 35 of 2019, as per the judgment annexed as CAM-(1), pages 127 to 163. The applicant deposes that since she commenced possession, occupation, and use of the suit land in 1992, it has been open, public, and in full glare, view, and knowledge of the public, quiet, and uninterrupted for close to 33 years to date, to amount to adverse possession.
  6. The applicant deposes that the respondents reside on land bordering L.R. No. Trans Nzoia/Kaisagat/201, from which L.R. No. Trans Nzoia/Kaisagat/247 measuring 5.728 Ha was subdivided; hence, they have had full knowledge of her entry, occupation, use, and ownership since the deceased's lifetime.
  7. The applicant deposes that the respondents have now invaded the suit land, cut down trees and other crops and vegetation, which acts pose serious threats to her and her family to seek alternative shelter as per annexed photos marked CAM-(1) pages 164-167. The applicant deposes that unless the court intervenes, she stands to suffer eviction, destruction of her forest and crops, as well as physical violence to both herself, the family, and employees should she continue to cultivate the suit land.
  8. The respondents oppose the originating summons by a reply dated 19/11/2025, denying that the applicant is entitled to the suit land by virtue of adverse possession for lack of legal or equitable interest in the suit parcel. They term the originating summons as *res judicata* in view of the judgment in Kitale ELC No. 118, as consolidated with Kitale ELC No. 87 of 2015, which judgment was upheld by the Court of Appeal in a judgment delivered on 5/6/2025, cancelling all subdivisions of L.R. No. Trans Nzoia/Kaisagat/201, including L.R. No. Trans Nzoia/Kaisagat/247, reverting the land to the original parent Title No. Trans Nzoia/Kaisagat/201 under their names, rendering Title No. Trans Nzoia/Kaisagat/247 non-existent, and as a result, the originating summons cannot be sustained against an extinguished title.



9. The respondents averred that the applicant failed to join and was not a party nor represented in the appellate proceedings to assert any ownership, which judgment remains fully binding, final, and valid to be capable of enforcement. The respondents term the originating summons as an abuse of the court process, a disguised attempt to re-open, challenge, or overturn a final Court of Appeal decree, which jurisdiction to vary, revisit, or sit on appeal, this court lacks.
10. The respondents averred that a claim on adverse possession was legally untenable after the Court of Appeal had recognized their rights to the parent title by adverse possession, extinguishing all compelling interest, including those of the applicant. The respondents averred that time for adverse possession could not run in favour of the applicant during the pendency of active litigation before the Environment and Land Court and the Court of Appeal, hence a claim under adverse possession has not been met by the applicant, the alleged occupation was not hostile, but was premised on an illegal and void subdivision, making it permissive or irregular, which is incapable of founding a claim for adverse possession.
11. The respondents averred that the applicant has not established a prima facie case, her title deed was nullified, she has not demonstrated irreparable harm, her alleged loss is compensable in damages, and the balance of convenience also favours them as they enforce a valid appellate decree. The respondents termed the originating summons frivolous, vexatious, incompetent, and contrary to the doctrine of finality, stare decisis, and judicial hierarchy, calling for a dismissal with costs.
12. As regards the application for temporary injunction, the respondents rely on grounds of opposition dated 19/11/2025, repeating essentially the same grounds as captured in the reply to the originating summons alluded to above.
13. The applicant relied on oral submissions made on 8/12/2025, insisting that she was on the land and that there is ELC No. 17 of 2025 before this court.
14. The respondents rely on written submissions dated 19/11/2025, isolating issues for determination. It is submitted that this suit is res judicata under Section 7 of the *Civil Procedure Act*. Reliance is placed on Independent Electoral and Boundaries Commission & Others -vs- Maina Kiai & Others [2017] eKLR, William Koros -vs- Hezekiah Kiptoo Komen & Others [2015] KECA 906 [KLR], and Eldoret Civil Appeal No. 35 of 2019.
15. On the status of the suit land title, the respondents submit that in view of the previous proceedings and judgment involving L.R. No. Trans Nzoia/Kaisagat/201, the resultant subdivision and titles are non-existent, hence a suit based on adverse possession cannot be over a non-existent or void title as held in Gabriel Mbui -vs- Mukindia Maranya [2014] eKLR, and in Munyu Maina -vs- Hiram Gathiha [2019] eKLR.
16. As to adverse possession, the respondents submit that the applicant has not met the ingredients. Reliance is placed on Kasuve -vs- Mwaani Investments Ltd [2004] eKLR, Gachuma Gacheru -vs- Maina Kabuchwa [2016] eKLR, and Ruth Wambui Kanyagia -vs- Josephine Wanjiku [2021] eKLR.
17. The respondents submit that the suit is a mere collateral attack on the Court of Appeal judgment, hence amounts to abuse of the court process and vexatious as held in Muchanga Investments Ltd -vs- Safaris Unlimited Africa Ltd & Others [2009] KECA 453, David Ndii & Others -vs- Attorney General High Court 2021, and John Florence Maritime Services Ltd & Another -vs- Cabinet Secretary, Transport & Infrastructure & Others.



18. The respondents submit that the applicant has not established a prima facie case, irreparable loss, and damage, or a balance of convenience to be entitled to a temporary injunction as held in *Giella -vs- Cassman Brown* [1973] EA 358. eKLR.
19. A party seeking temporary orders of injunction has to meet the tests set out in *Giella -vs- Cassman Brown* (supra). A prima facie case is defined as one where, upon looking at the material presented, a right has been infringed or violated to call for a rebuttal from the opposite side. It must be a genuine and arguable case. See *Mrao Ltd -vs- First American Bank of (K) Ltd & Others* [2003] eKLR.
20. In *Nguruman Ltd -vs- Jan Bonde Nielsen & Others* [2014] eKLR, the court said that an applicant must show a clear and unmistakable right to be protected, which is directly threatened by an act ought to be restrained, the invasion of the right has to be material and substantive, and that there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.
21. The court said that an applicant need not establish title, so long as it can show that it has a fair and bona fide question to raise as to the existence of the right which it alleges.
22. In establishing whether a prima facie case is there or not, a court does not hold a mini-trial, but sees on the face of it whether the person applying for an injunction has a right that has been threatened with violation.
23. As to irreparable loss, injury, or damage, it refers to one that cannot be quantified monetarily. It has to be real, apparent, imminent, and incapable of being recovered in law by way of damages. In *Nguruman Ltd -vs- Jan Bonde Nielsen* (supra), the court said that where there is doubt as to the adequacy of respective remedies in damages available, the question of the balance of convenience would arise.
24. Balance of convenience, as held in *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* (2018) eKLR, refers to the inconvenience to the applicant if the injunction is refused, being more compared to that of the respondent if it is granted.
25. Section 63(e) of the *Civil Procedure Act* provides that a court may issue a temporary injunction to prevent an irreparable injury that the applicant may suffer if the injunctive order is not granted. The second instance under Order 40 of the Civil Procedure Rules is where it is proved by an affidavit that there is a danger of the property being wasted, damaged, or alienated.
26. The word instance is where there is an alleged breach of contract or other injury of any kind, whether compensation is claimed or not. The third instance is to maintain the position that will more easily enable justice to be done when the final order is made.
27. As an equitable remedy, an applicant has to make a full and frank disclosure of material facts as held in *Kenleb Construction Ltd -vs- New Gatitu Service Station Ltd & Another* [1990] KLR 557. The applicant also has to satisfy all three pillars distinctly, separately, and logically as held in *Kenya Commercial Finance Co. Ltd -vs- Afraha Education Society* [2001] 1 EA 86.
28. In determining whether or not to grant the injunction where the right is not disputed but the breach is disputed, the court opts for the lower risk of injunctive relief as held in *Amir Suleiman -vs- Amboseli Resort Ltd* [2004] eKLR.
29. The applicant bases her claim on adverse possession following a sale agreement and subsequent transfer, registration, and issuance of title to L.R. No. Trans Nzoia/Kaisagat/247 as a resultant subdivision of Title No. Trans Nzoia/Kaisagat/201, now reverted to the respondents. Although the respondents do not seem to dispute that the applicant is on the suit land, they allege that her suit is res judicata and lacks merit, following the invalidation of her previous title.



30. In *Wanyama & Another -vs- Nyuki & Others* [2026] KECA 261 [KLR] (13<sup>th</sup> February 2026) (Judgment), the court cited with approval *Chervon (K) Ltd -vs- Harrison Charo Wa Shutu* [2016] eKLR, that the critical issue on adverse possession is to prove dispossession and discontinuation of the possession of the true owner for a period of 12 years, by acts inconsistent with the owner's enjoyment of the soil for which he intended.
31. In *Kenya & Others -vs- Mohamed* [2025] KECA 2219 [KLR], the court found that an adverse possessor must demonstrate when possession of land commenced, the nature of possession, whether it was exclusive, open and adverse, and knowledge by the true owner for a period of 12 years.
32. In *Athman Mwalimu & Others -vs- Hirji Ramji Halal & Another*, Mombasa Civil Appeal No. E036 of 2023, the court said that occupation beyond the period of 12 years does not guarantee success in a claim for adverse possession and that, as held in *Mombasa Teachers Cooperative Savings & Credit Society -vs- Robert Mahabindu Katama & 15 Others* [2018] eKLR, other ingredients must be proved.
33. Adverse possession goes with the land and not the title. It occurs when the true owner omits or neglects to assert title, or take action to drive out the intruder. It must be possession with neither force nor stealth nor licence of the true owner, as held in *Mtana Lewa -vs- Kahindi Ngala Mwangandi* [2015] eKLR.
34. Adverse possession out of a sale runs upon payment of the last instalment or when the sale agreement becomes void. See *Mbui -vs- Maranya* [1993] eKLR. A change of ownership does not affect the rights of the adverse possessor. In *Douglas Mbugua Mungai -vs- Harrison Munyi* [2019] eKLR, the court said that a mere change of ownership of land occupied by an intruder whose time has begun to run is an overriding interest, which the new owner's title will be subject to.
35. In *Titus Kigoro Munyi -vs- Peter Mburu Kimani* [2015] eKLR, the court observed that under Section 7 of Cap 22, the law relating to prescription affects not only present holders of title but their predecessors.
36. Equally, in *M'Riria & Others -vs- Muthomi* Civil Appeal No. 253 of 2019 [2025] KECA 951 [KLR] (4<sup>th</sup> April 2025) (Judgment), the court said that possession must be continuous and a break on the chain of possession, such as where the owner asserts his rights midway, creates a break in the running of time.
37. The court said that exclusive possession must be proved, such that where the land in question is under joint use by the claimant and other people, unless the claim in possession is by all those in possession, the claimant cannot, on his own, unless he can identify a portion of land exclusively occupied by himself, claim adverse possession.
38. In *Wilson Kazungu Katana & Others -vs- Salim Abdalla Bakshwein & Another* [2015] eKLR, the court held that the identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. *Animus possidendi*, or the intent to possess the land as of right, is another factor as held in *Samuel Kihamba -vs- Mary Mbaisa* [2015] eKLR. Peaceful and uninterrupted use of the land is also paramount, as held in *Songoi -vs- Songoi* [2020] eKLR.
39. Having set the law on adverse possession, the question is whether the applicant who claim to have come on the land as result of a sale, transfer, registration and issuance of title now nullified, can change lane and claim that she is on the land as an adverse possessor against the respondents, now beneficiaries of title on account of court order or decree issued on 3/12/2018, and confirmed by the Court of Appeal on 5/6/2025.



40. Res judicata operates to prevent a cause of action or issues from being re-litigated. They have been determined on merit. See Communications Commission of Kenya & Others -vs- Royal Media Services Ltd & Others [2014] eKLR. For it to be invoked, there must be evidence of a decision on the issue by a competent court, the matter must be substantially or directly in dispute between the parties in the same suit, and lastly, parties in both suits must be the same or parties under whom or any of them claim litigation under the same title.
41. In this matter, there is no evidence that the applicant was part of the hearing and determination of the issues now pleaded herein as against the respondents. Coming to acts of adverse possession, they include building structures, farming, and even harvesting crops on the suit land without obtaining permission from the trust owner. See Thika Garissa Road Developers Ltd -vs- Mwangi & 4 Others [2023] KECA 269 [KLR].
42. The applicant has demonstrated through annexures that she has developed the suit land from 1992 to the present. Her rights to the suit land are under threat by the respondents. There will be irreparable loss or damage if her rights are not protected. The balance of convenience tilts in favour of granting a temporary injunction restricted to the area occupied by the applicant, measuring 5.728 Ha, to last for one (1) year, from the date hereof.
43. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18<sup>TH</sup> DAY OF MARCH 2026.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Dennis

Olwande for the applicant present

Nabwile for the respondent present t; width: 23%}

