



Simwa v Ang'elei & 3 others (Environmental and Land Originating Summons E017 of 2025) [2026] KEELC 1677 (KLR) (18 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1677 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2025**

CK NZILI, J

MARCH 18, 2026

**IN THE MATTER OF AN APPLICATION FOR AN
ORDER**

**THAT PARCEL OF LAND FORMERLY KNOWN AS
L.R. NO. TRANS NZOIA/KAISAGAT/201 HAS BEEN
ACQUIRED BY WAY OF ADVERSE POSSESSION BY
PROF. RICHARD ONYINO SIMWA**

BETWEEN

PROF RICHARD ONYINO SIMWA APPLICANT

AND

ROBERT LOBUR ANG'ELEI 1ST RESPONDENT

GEDION LOITALIM ANG'ELEI 2ND RESPONDENT

JOSHUA LONYANMAN ANG'ELEI 3RD RESPONDENT

ALLAN ENGILAE ANG'ELEI 4TH RESPONDENT

RULING

1. The court is asked to grant the applicant a temporary order of injunction against the respondents, their agents, servants, employers, employees, and any other person from interfering with, constructing on, disposing of, entering into, alienating, and in any way whatsoever dealing in all that parcel of land formerly known as L.R. No. Trans Nzoia/Kaisagat/248 measuring 2.72 Ha, a subdivision of LR No. Trans Nzoia/Kaisagat/201, pending hearing and determination of the originating summons dated 7/10/2025, in which he seeks to be declared entitled to the land by virtue of adverse possession.



2. The application is supported by grounds on its face and a supporting affidavit of Prof. Richard Onyino Simwa, sworn on 8/10/2025. The applicant deposes that in 1992, he bought and took vacant possession of 2.72 Ha from the late Nancy Mabwa (deceased), out of L.R. No. Trans Nzoia/Kaisagat/201, as per the sale agreement, acknowledgement note, breakdown of land purchase payment, application for Land Control Board Consent, Land Control Board Consent, receipt from ArchSurveyors, and Kenya Commercial Bank deposit slips attached as annexures at pages 1-23.
3. The applicant deposes that following payments, he openly took vacant possession, occupied and begun using the suit land with the full knowledge of the respondents, as he waited for its survey, subdivision, transfer and registration under his name, by constructing his matrimonial home, erecting livestock sheds as well as cultivating subsistence crops and eucalyptus trees, as per photos appearing as annexures at pages 24-48.
4. The applicant deposes that, since the seller passed on before the transfer, leaving behind young children, it took a long time for any of them to be able to petition for and be issued a grant of letters of administration, until Sheila Kabole Mabwa petitioned through Kakamega High Court P & A No. 165 of 2010, where he was included as a beneficiary of the estate.
5. The applicant deposes that during the succession property, three individuals, namely Sheila Kabole Mabwa, Richard Onyino Simwa, and Peter Machora Onchwari, were allocated portions of the suit land as per the certificate of confirmation of grant dated 26/11/2011, attached as page 49 of the annexures.
6. The applicant deposes that upon subdivision of L.R. No. Trans Nzoia/Kaisagat/201 into four portions, he was registered as the proprietor of L.R. No. Trans Nzoia/Kaisagat/248 measuring 2.72 Ha as per the title deed issued on 22/1/2015, appearing on pages 50 - 52 of the annexures.
7. The applicant deposes that in 2019 or thereabout, the received shocking news that the mother title was on sale by the respondents claiming ownership, who is company of police officers and other unknown third parties, visited the suit land for purposes of viewing it and selling the same, only, after inquiry at the lands office, to establish that the respondents had been sued for trespassing by the legal administrators in Kitale ELC No. 87 of 2017 (OS) and ELC No. 118 of 2015 and a judgment issued as per pleadings and judgment delivered on 3/12/2018, which led to an appeal and judgment at Eldoret Court of Appeal Civil Appeal No. 35 of 2019 delivered on 5/6/2023 as per annexures in pages 54 - 159.
8. The applicant deposes that after fully purchasing the suit land and making entry in 1992, he has been in uninterrupted and continuous possession for over 33 years. The applicant deposes that the respondents are now threatening to unlawfully, forcefully, and violently evict him from the suit land where he lives with his family and employees.
9. Further, the applicant deposes that due to the aforesaid actions of physical violence by the respondents, he has been forced to seek refuge and shelter outside the suit land; otherwise, unless the court intervenes, he shall stand to suffer irreparable loss and damage, due to the threatened unlawful demolition of his matrimonial home where his family has lived for 33 years, with full knowledge of the respondents who come from within the vicinity of the suit land.
10. The application is opposed on the grounds of the opposition dated 12/11/2025 that:
 - a. The suit is res judicata due to Kitale ELC No. 118 of 2015 consolidated with ELC No. 87 of 2015, and subsequently Eldoret Civil Appeal No. 35 of 2019, whose decision in 5/6/2025 upheld the cancellation of all the subdivisions of L.R. No. Trans Nzoia/Kaisagat/201 and Title No. Trans Nzoia/Kaisagat/248.



- b. The subject parcel Title No. Trans Nzoia/Kaisagat/248 was judicially cancelled and ceased to exist in law, hence no claim for adverse possession can be maintained over a non-existent or extinguished title.
 - c. The applicant was an affected party in the said appellate proceedings, participated therein, and is bound by the findings and decree of the Court of Appeal, which confirmed the respondents as the lawful owners of the restored L.R. No. Trans Nzoia/Kaisagat/201.
 - d. The suit and the application are an abuse of the court process, being a disguised attempt to reopen and overturn a final judgment of the Court of Appeal, which this court lacks jurisdiction to vary, review, or set aside.
 - e. The claim of adverse possession is legally untenable, as time for adverse possession cannot run during the pendency of active litigation over the same property.
 - f. The application offends the doctrine of finality of litigation and stare decisis and undermines the hierarchy of judicial authority.
 - g. The application discloses no prima facie case with a probability of success, the purported title having been nullified, and the respondents confirmed as lawful owners in possession.
 - h. The balance of convenience tilts in favour of the respondents and supports the refusal to grant the orders sought.
 - (i) The application is frivolous, vexatious, and fatally defective.
11. The respondents rely on written submissions dated 12/11/2025, isolating five issues for determination. On res judicata, the respondents submit that the instant issues were heard and finally determined by a court of competent jurisdiction between the same parties, or parties litigating under the same title. Reliance is placed on Section 7 of the *Civil Procedure Act*, Independent Electoral and Boundaries Commission -vs- Maina Kiai & 5 Others [2017] eKLR and Uhuru Highway Development Ltd -vs- Central Bank of Kenya [1999] eKLR.
 12. On adverse possession, the respondents submit that it cannot be on a non-existent or cancelled title now confirmed by the appeal. Reliance is placed on Mtana Lewa -vs- Kahindi Ngala Mwangandi [2015] eKLR, and Chevron (K) Ltd -vs- Harrison Charo Wa Shutu [2016] eKLR.
 13. The respondents submit that where the title is under active litigation, time could not run for adversity as held in Githu -vs- Ndeete [1984] KLR 776, and Samuel Miki Waweru -vs- Jane Njeri Richu [2207] eKLR.
 14. The respondents submitted that since 2016-2025, there has been active litigation and that the claims cannot supersede a Court of Appeal decree, which determined adverse possession in their favour, which would offend the doctrine of judicial hierarchy, if the High Court could replace a superior court's finding.
 15. On the ingredients of a temporary injunction, the respondents submit that the applicant has not met the test since the title is already cancelled and non-existent, the Court of Appeal rejected his claim, his allegations of occupation were litigated and dismissed, and his claim is contrary to a binding appellate decree. Reliance is placed on Mrao Ltd -vs- First American Bank of (K) Ltd [2003] eKLR and Nguruman Ltd -vs- Jan Bonde Nielsen & Others [2014] eKLR.
 16. The respondents submit that this court is bound by the decision of the superior court under Article 163(7) of *the Constitution*, hence cannot reopen or vary a decree of the Court of Appeal as held in



- William Koros -vs- Hezekiel Kiptoo Komen Civil Appeal No. 223 of 2013, and Motor Vessel Lillian “S” -vs- Caltex Oil (K) Ltd [1985] KLR, since jurisdiction is everything.
17. The claim before the court is the originating summons dated 7/10/2025. The respondents oppose the originating summons through a response dated 12/11/2025 and a replying affidavit of Joshua Lonyanman Ang’elei, sworn on 12/11/2025, on account of res judicata, non-existent titles, a superior decree of a Court of Appeal, lack of jurisdiction due to the doctrine of stare decisis, and abuse of the court process.
 18. It is trite law that when the issue of jurisdiction is raised, it has to be determined first. A court’s jurisdiction flows from either *the Constitution* or legislation. A court cannot arrogate to itself a jurisdiction it does not have, as held in Samuel Kamau Macharia -vs- Kenya Commercial Bank Ltd & Others Civil Appl. No. 2 of 2011. In this matter, the respondent challenges the jurisdiction of this court on both res judicata and the doctrine of stare decisis.
 19. Res judicata is a doctrine of substantive law that once legal rights of parties are determined judicially, such an edict stands as a conclusive statement as to those rights. See Kenya Commercial Bank Ltd -vs- Muiiri Coffee Estates Ltd & Another [2016] eKLR. To prove res judicata, the following elements, as set out in John Florence Maritime Services Ltd -vs- Another -vs- CS Transport & Infrastructure & Others [2021] KESC 39 [KLR], must be established:
 - a. There is a former judgment or order that was final.
 - b. The judgment or order was on merit.
 - c. The order or judgment was rendered by a court of competent jurisdiction over the subject matter and the parties.
 - (d) There must be between the first and second action identical parties, subject matter, and cause of action.
 20. The principle of stare decisis, on the other hand, was discussed in Godfrey M. Asanyo & Others -vs- The Attorney General Petition No. 7 of 2019. The court cited Gatirau Peter Munya -vs- Dickson Mwenda Kithinji & Others [2014] eKLR and Kidero -vs- Waititu Petition No. 18 of 2014, that the doctrine is embodied in Article 163(7) of *the Constitution*, that precedents set by the Supreme Court of Kenya and the Court of Appeal are binding on all other courts, as a constitutional requirement, and as enhancing legitimacy, sound judicial administration, clarity, certainty, and predictability in the legal and judicial systems. In Rai -vs- Rai [2013] eKLR, the court said that adherence to precedent should be the rule and not the exception.
 21. The respondents take the view that the issues now raised by the applicant were heard and determined up to the Court of Appeal, hence the claim is res judicata. A cause of action is defined as acts on the part of the defendant that gave rise to a cause of complaint by the plaintiff. See Kigwor Company Limited -vs- Samedy Trading Company Limited [2021] KECA 810 (KLR), D.T. Dobie & Company (Kenya) Limited -vs- Joseph Mbaria Muchina & another [1982] KLR 1 and Attorney General -vs- Andrew Maina Githinji & Another [2016] eKLR.
 22. The applicant pleads that he made an entry into the suit land initially by virtue of a sale, followed by a transmission of the land to his name through the legal administrator of the estate of the initial registered owner, and has been in continuous and uninterrupted occupation until recently, when the respondents threatened to evict him, claiming to have acquired the land by virtue of valid decree of this court, which was later upheld by the Court of Appeal in June 2025.



23. The respondents aver that the applicant had joined the appeal as an affected party, was a participant who is bound by the decree of the Court of Appeal. He pleads that this court is bereft of jurisdiction to entertain, hear, and determine or reopen, or overturn a binding decree of a higher court by virtue of Article 163(7) of *the Constitution*.
24. In *Muruatetu & Another -vs- Republic* [2016] KESC 12 [KLR], the court said that in every case, where some parties are enjoined as interested parties, not, the issues to be determined by the court will always remain the issues as presented by the principal parties or as framed by the court or out of submissions by the principal parties. In the judgment of the Court of Appeal at paragraphs 26-30, the court declined to determine the issues raised by the applicant herein.
25. It is common ground that the former suits leading to the appeal were not between the applicant herein as a principal party against the respondents or the initial registered owners of the subject property.
26. The doctrine of res judicata allows a litigant only one bite of the cherry. It prevents a litigant or person claiming under the same title from returning to court to claim further relief not claimed in the earlier suit. It prevents multiplicity of suits to ensure litigation comes to an end and to ensure finality of litigation as a matter of public policy. The judgment in the Court of Appeal cannot be termed as conclusive between the rights of the parties herein.
27. In *E.T. -vs- Attorney General & another* [2012] KEHC 5506 (KLR), the court said that it has to be vigilant to guard against litigants evading res judicata by introducing new causes of action to seek the same remedy from the court. In *Omondi -vs- National Bank of Kenya Ltd & Others* [2001] EA 177, the court said that parties cannot evade res judicata by merely adding other parties or causes of action in a subsequent suit.
28. I think the respondents have failed to demonstrate through pleadings, proceedings, and judgment where the issue of adverse possession against them or the former appellant was heard and determined on merit, to finality, by a court of competent jurisdiction.
29. As to the doctrine of stare decisis, judgment in rem is one that is conclusive as against all the world in whatever it settles as to the status of a person or property, or as to the right or title to the property.
30. In such a judgment, all persons, regardless of whether they were or not parties to any legal proceedings, are bound by a judgment in rem and as such are estopped from averring that the status of a person or through, or the right or title to property is other than what the court by the judgment declared or made it to be.
31. On the other hand, a judgment is personam that determines the rights of the parties to an action and those who are privy to them as regards the subject matter. In *Ngutari & 5 others -vs- Okello & 5 others* (Civil Appeal E081 & E165 of 2021 (Consolidated)) [2025] KECA 505 (KLR) (21 March 2025) (Judgment), the court said where it is called to hand down in rem judgment, care must be taken that those who are not before the court are not unduly prejudiced by the same when their position is not the same as those other parties before the court.
32. In *Japhet Nzila Muangi vs Kenya Safari Lodge & Hotels Ltd* [2008] eKLR, the court said that an ordinary judgment that binds only the parties to it is a judgment in personam. From the foregoing, I do not think the doctrine of stare decisis applies here, since the Court of Appeal did not hear and determine the issue on the merits and to finality.
33. Coming to a temporary injunction, a party seeking a temporary injunction must meet the conditions set in *Giella -vs- Cassman Brown* [1973] EA 358.



34. The applicant says that he bought the suit land, obtained a title which has been invalidated, while in possession of the suit property since 1992 to the present. He says that his possession has been inconsistent with the rights of the predecessors and the respondents' enjoyment of the soil for the purposes for which they intended to use it. See *Chevron (K) Ltd -vs- Harrison Charo Wa Shutu* (supra).
35. Adverse possession, as held in *Mtana Lewa -vs- Kahindi Mwangandi* (supra), arises out of defaults on the part of the true owner who neglects or omits to remove an intruder for a period of 12 years. Proof of both factual and the intention to possess as of right for the entire period of 12 years is key. See *Masambaga & 7 others -vs- Malindi Holdings and Estate Limited* [2022] KECA 782 (KLR).
36. A claimant must demonstrate the date of entry, nature of possession, knowledge of possession, duration of possession, open and undisturbed occupation, without secrecy, permission, or interruption, as held in *Kenya & Others -vs- Mohamed* [2025] KECA 2219 [KLR]. Actual possession must be established. See *Teresa Waithaka Gachira -vs- Joseph Mwangi Gachira* [2009] KECA 445 [KLR].
37. A prima facie case refers to one where, on the material placed before the court, a right has been infringed or threatened with breach to call for a rebuttal from the other side. See *Mrao Ltd -vs- First American Bank of (K) Ltd* (supra).
38. A claimant need not establish that he has a fair and bona fide question to raise as to the existence of the right, which he alleges. Irreparable loss denotes one that cannot be established monetarily or compensated by way of damages, as held in *Nguruman Ltd -vs- Jan Bonde Nielsen* (supra). Balance of convenience is the inconvenience of granting the injunction being more to the applicant than the respondent, as held in *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* [2018] eKLR.
39. Looking at the pleadings, other than the previous judgment or proceedings, the respondents do not dispute the sale agreement held by the applicant, his occupation and developments on the suit land, and or efforts to eject him therefrom, other than self-help.
40. This court finds that the applicant is entitled to the relief of a temporary injunction, which is hereby issued, restricted to the land measuring 2.72 Ha, occupied by the applicant, to last for one (1) year, from the date hereof.
41. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH 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

