



**Marakia v Simiyu & another (Land Case E019 of 2024)
[2026] KEELC 1963 (KLR) (11 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1963 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
LAND CASE E019 OF 2024
AK BOR, J
MARCH 11, 2026**

BETWEEN

JEREMIAH MUSYOKI MARAKIA PLAINTIFF

AND

ROBAI NAMISI SIMIYU 1ST DEFENDANT

LAND REGISTRAR, BUNGOMA COUNTY 2ND DEFENDANT

RULING

1. The Plaintiff filed the application dated 10/11/2025 seeking to have this court extend the interim orders issued on 6/3/2025 restraining the Defendants from interfering, disposing of or transferring the land known as Malakisi North/Central Namwela/162 measuring 2 acres and Malakisi North/Central Namwela/236 (jointly referred to as the suit land) pending hearing and determination of the main suit.
2. The application was made on the grounds that on 14/8/2024, the court issued a temporary injunction restraining the 1st Defendant from interfering with the suit land pending hearing and determination of the application dated 12/8/2024. That application was heard and vide the ruling delivered on 6/3/2025, Justice Cherono confirmed the temporary injunction and extended the orders for 8 months within which period the suit was to be heard and determined, failing which the injunction would be vacated. The Plaintiff claimed that his advocate ceased to act for him, which affected the hearing scheduled for 6/11/2025. He stated that he was guided by the court’s diary and that the failure to conclude the matter within the 8 months was beyond his control. He added that if the interim orders were not extended, the Defendants might deal with the suit land, which would render these proceedings a mere academic exercise.
3. The Plaintiff swore the affidavit in support of the application and annexed a copy of the ruling delivered by Judge Cherono on 6/3/2025. He expressed his apprehension that the Defendants may



- proceed to subdivide or dispose of the suit land unless the orders were extended pending hearing and determination of the suit.
4. John Matete Simiyu swore the replying affidavit in opposition to the application. He deponed that he had a power of attorney from the 1st Defendant. He averred that this matter came up on several occasions on 8th April, 20th May, 10th June and 30th September, 2025 but could not proceed due to applications for adjournment made by the Plaintiff. He added that the injunctive orders issued by the court on 6/3/2025 lapsed on 6/11/2025.
 5. The 1st Defendant averred the application was res judicata to the application dated 12/8/2024 and that the court was functus officio and could not sit on appeal against its own orders. He added that the Plaintiff had not given a good reason for failing to comply with the directions of the court. He added that the Plaintiff had been indolent in prosecuting his case, which prejudiced the 1st Defendant. He contended that there were no orders to be extended since they had lapsed by the time this application was brought. He maintained that the application was an abuse of the court process, having been filed by a stranger yet there was no notice of change of advocates.
 6. The court directed parties to file and exchange written submissions on the application. The Plaintiff submitted that he had met the conditions in *Giella v Cassman Brown & Co. Limited* [1973] EA 358. He elaborated that he had established a prima facie case with a probability of success and that his claim raised serious triable issues regarding his proprietary interest in the suit land. He argued that he would suffer injury that could not adequately be compensated by an award of damages if the injunction were not extended. He pointed out that land has unique value and its loss or alienation constitutes irreparable harm and that if the Defendant disposes of or encumbers the suit land before the suit is heard, his claim if successful, would be rendered a mere pyrrhic victory. He added that the threat of disposal of the suit land remained and that the scales of convenience favoured maintaining the current state of affairs to ensure that justice was not defeated.
 7. The Plaintiff urged that the procedural lapse occasioned by the withdrawal of his former counsel from acting for him should not be visited upon him as a litigant who had demonstrated diligence by promptly instructing new counsel and moving the court for appropriate relief. He cited several court decisions in support of his claim and added that the court had jurisdiction pursuant to Section 3A of the *Civil Procedure Act* and Order 40 of the Civil Procedure Rules to grant or extend interlocutory orders as the interests of justice demand. He argued that it is compelling to preserve the substratum of the dispute and ensure that the final hearing was meaningful.
 8. The 1st Defendant submitted that the court order of 6/3/2025 was clear and specific. He added that in certain instances the court may reinstate and extend injunctive orders which had lapsed if there is sufficient reason and a proper application was made, or where the court was exercising its discretion depending on the circumstances of the case, or where the suit was alive and had not become functus officio and based on the equitable conduct of the applicant. The 1st Defendant submitted that the Plaintiff had not demonstrated sufficient grounds for reinstatement and extension of the injunction that had lapsed. Further, that the way the application was framed, it sought a fresh injunction yet the court had already decided the application and directed that the Plaintiff take pragmatic steps to prosecute the suit. The 1st Defendant submitted that the court record showed that the Plaintiff was not ready to start his case and that he had not been vigilant.
 9. The 1st Defendant submitted that the application was res judicata pursuant to Section 7 of the *Civil Procedure Act*. He urged that the ruling delivered by the court was final yet the Plaintiff brought the instant application seeking orders similar to those sought in the earlier application.



10. Regarding the principles for grant of a temporary injunction, the 1st Defendant submitted that the Plaintiff failed to establish a prima facie case against him because the 1st Defendant was the registered owner of the suit land and was in occupation of the land. Further, that being an equitable and discretionary remedy, an injunction may be denied if a Plaintiff has committed acts or misconducted himself in a manner that does not meet the approval of equity. The 1st Defendant urged that the Plaintiff had not demonstrated that he would suffer irreparable damage if the orders sought were not granted.
11. The other point taken up by the 1st Defendant is that Justice Boaz Olao heard and determined Bungoma ELC Case No. 27 of 2019 (OS), where the subject matter was Malakisi North/Central Namwela/162 and that if the Plaintiff were unhappy with that judgment, he should have filed an application for review of the judgment but not filed a new suit.
12. The issue for determination is whether the court should extend the temporary injunction issued on 6/3/2025 restraining dealings with the suit land. The injunction was granted on condition that the suit had to be heard and determined within 8 months failing which the injunctive orders would lapse. The court notes from the court record that when the matter came on 8/4/2025, the Plaintiff informed the court that he had not complied and sought 7 days. The matter was put off for mention on 20/5/2025 to confirm compliance. On 20/5/2025, a further mention date of 10/6/2025 was given to confirm compliance and on that date, the matter was fixed for hearing on 30/9/2025. On the hearing date, the Plaintiff's advocate informed the court at 9.00 am that he had filed an application to cease acting for the Plaintiff and sought an adjournment. The adjournment was declined and the court directed that the hearing would proceed at 11.00 a.m. The record shows that the Plaintiff attended court at 11.00 a.m. and sought another hearing date. The matter was taken out of the hearing list on condition that the Plaintiff paid the 1st Defendant's costs which were assessed by the court. The matter was fixed for hearing on 6/11/2025. On 6/11/2025 the Plaintiff attended court and told the court that he had engaged another advocate. The 1st Defendant's advocate pointed out that there was a pending application dated 28/9/2025. Since the Judge was proceeding on transfer, he fixed that application for hearing on 2/2/2026. The Plaintiff filed the application dated 10/11/2025. The court fixed the matter for directions on 24/11/2025. When it came up on 24/11/2025, the Plaintiff's advocate had not served the application and it was put off to 18/12/2025. On 18/12/2025, it was the 1st Defendant who sought an adjournment and time to file his response and the application was put off to 2/2/2026.
13. The Plaintiff urged that the failure to conclude the matter within the 8 months was beyond his control. Being a discretionary order, the court is guided by factors such as the conduct of the party and the explanation given for non-compliance within the court's orders. From the sequence of events set out above, the court is not persuaded that the Plaintiff was diligent and took steps to have the suit heard and determined within the time directed by the court.
14. The court declines to grant the orders sought in the application dated 10/11/2025. The 1st Defendant is awarded the cost of the application.

DELIVERED VIRTUALLY FROM NANYUKI THIS 11TH DAY OF MARCH 2026.

K. BOR

JUDGE

No appearance for the Parties

