



REPUBLIC OF KENYA



KENYA LAW
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**Adongo & another v Adongo & another (Environment and Land Case
E002 of 2026) [2026] KEELC 2305 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2305 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND CASE E002 OF 2026**

AE DENA, J

APRIL 23, 2026

**IN THE MATTER OF LAND PARCEL NO. SIAYA/ABOM/669 (NOW
SUBDIVIDED INTO SIAYA/ABOM/4199 AND SIAYA/ABOM/4200)**

AND

**IN THE MATTER OF SECTIONS 7, 17, AND 38 OF THE LIMITATION OF
ACTIONS ACT CAP 22 LAWS OF KENYA AND IN THE MATTER OF SECTION
28(H) OF THE LAND REGISTRATION ACT NO. 3 OF 2012 LAWS OF KENYA**

BETWEEN

**VITALIS OWEMBI ADONGO 1ST APPLICANT
MARGARET OTIENO 2ND APPLICANT**

AND

**MATHEWS OGOWA ADONGO 1ST RESPONDENT
JARED OWINO OYAYA 2ND RESPONDENT**

RULING

**IN THE MATTER OF LAND PARCEL NO. SIAYA/ABOM/669 (NOW SUBDIVIDED INTO
SIAYA/ABOM/4199 AND SIAYA/ABOM/4200)**

AND

**IN THE MATTER OF SECTIONS 7, 17, AND 38 OF THE LIMITATION OF ACTIONS ACT
CAP 22 LAWS OF KENYA AND IN THE MATTER OF SECTION 28(h) OF THE LAND
REGISTRATION ACT NO. 3 OF 2012 LAWS OF KENYA**

BETWEEN



VITALIS OWEMBI ADONGO.....1ST APPLICANT MARGARET OTIENO.....2ND APPLICANT

-VERSUS-

MATHEWS OGOWA ADONGO.....1ST RESPONDENT JARED OWINO OYAYA.....2ND RESPONDENT

RULING

1 This is a ruling on the Notice of Motion dated 26/01/2026, brought by the Applicant under Certificate of Urgency. The application was brought under Sections 1A, 1B, 3A of the Civil Procedure, Order 40 Rules 1,2,3 of the Civil Procedure Rules, 2010. The Motion sought Orders, inter-alia:

1. Interim Ex Parte Orders: That this application be certified urgent and heard ex parte, in the first instance, and pending inter partes hearing, the 1st and 2nd Respondents, their servants, agents, employees, relatives, assigns, and/or any other persons acting under their instructions be immediately restrained from.
 - a. Carrying out gold mining activities and Land Parcel SIAYA/ABOM/4199 measuring approximately 4.85 Ha and SIAYA/ABOM/4200 measuring approximately 0.35Ha
 - b. Harassing, threatening, trespassing into, insulting, or interfering with the 1st and 2nd Applicants together with their families and homesteads situated within the suit land
2. That pending the hearing and determination of this suit, the 1st and 2nd Respondents, their servants, agents, employees, relatives, assigns, and/or any other persons acting under their instructions be restrained from carrying out gold mining activities on land parcels SIAYA/ABOM/4199 measuring approximately 4.85 Ha and SIAYA/ABOM/4200 measuring approximately 0.35Ha
3. That pending the hearing and determination of this suit, the 1st and 2nd Respondents, their servants, agents, employees, relatives, assigns, and/or any other persons acting under their instructions be restrained from harassing, threatening, trespassing into, insulting, or interfering with the 1st and 2nd Applicants together with their families and homesteads.
4. That pending the hearing and determination of this suit, the 1st and 2nd Respondents, their servants, agents, relatives, and/or assigns be restrained from selling, alienating, transferring, wasting, charging, leasing, or otherwise interfering with the suit land being SIAYA/ABOM/4199 (4.85 Ha) and SIAYA/ABOM/4200 (0.35 Ha).
5. That this Honourable Court do declare that the subdivision of SIAYA/ABOM/669 measuring 5.2 hectares and the transfer of SIAYA/ABOM/4200 (0.35 Ha) to the 2nd Respondent was illegal, null, void, fraudulent, and of no effect in law, and that the said subdivision and transfer be revoked forthwith.
6. That this Honourable Court do order that the 1st and 2nd Applicants be registered as proprietors of their rightful portions of the suit land, namely SIAYA/ABOM/4199 (4.85 Ha) (formerly SIAYA/ABOM/669), in accordance with Luo customary law, the long-standing family occupation, and the doctrine of adverse possession.
7. That the Officer Commanding Station (OCS), Bondo Police Station, do ensure compliance and enforcement of the orders of this Honourable Court herein.
8. That costs of this application be provided for



2 The application is premised upon the grounds on its face and the supporting affidavit sworn by VITALIS OWEMBI ADONGO on 26th January, 2026. The deponent avers that 1st and 2nd Applicants are son and a daughter-in-law of the late ADONGO OLALI, the original owner of land parcel number SIAYA/ABOM/669 and SIAYA/ABOM/674 with parcel number SIAYA/ABOM/669 being the family homestead land.

3 It is averred that upon land adjudication in the early 1980s, land parcel number SIAYA/ABOM/669 was registered in the name of the 1st Respondent MATHEWS OGOWA ADONGO, as the eldest son, to hold the same in trust for the family, while land parcel number SIAYA/ABOM/674 was registered in the name of PETERLIS AHONO ADONGO. Copies of the Green Card for SIAYA/ABOM/669 and the Land Certificate for SIAYA/ABOM/674 respectively are annexed.

4 It is averred that the late Adongo Olali died in the late 1960s and was buried on land parcel number SIAYA/ABOM/669 together with his two wives HERENIA OLWAL and ISABELLA RARYEYA, and other close family members and which has at all material times remained the ancestral home of the family, and several children and grandchildren of the Applicants have been born, lived, and buried thereon.

5 That the 1st Applicant was born on the said land in the year 1960, has lived there for over sixty (60) years, married thereon, raised his family thereon, and buried four (4) of his children on the said land. That by virtue of open, continuous, exclusive, and uninterrupted occupation of the suit land for a period exceeding twelve (12) years, the 1st Applicant acquired rights by adverse possession under Sections 7, 17, and 38 of the Limitation of Actions Act.

6 It is stated that under Luo customary law and tradition, the 1st Applicant, being the last-born son, was entitled to inherit and establish a homestead on the family land, but the 1st Respondent has persistently refused to allow him to do so and confined him to a small boyhood hut locally known as a Simba, forcing him at times to rent accommodation away from his ancestral home.

7 That the 2nd Applicant was married to the late JOHN OTIENO ADONGO, has lived on the suit land for over forty-five (45) years, established her matrimonial home thereon, raised six (6) children, buried her late husband thereon in 2016, and also buried three (3) of her children on the said land. That despite her long occupation and status as a widow, the 1st Respondent has persistently harassed the 2nd Applicant, trespassed into her homestead, cut trees, denied her cultivation and grazing rights, and subjected her to intimidation. Moreover, on one occasion, the 1st Respondent caused the arrest of the 2nd Applicant's son Victor Odhiambo Otieno when he resisted the Respondent's unlawful acts.

8 It is stated that on or about 28th January 2020, the 1st Respondent unlawfully caused the closure and subdivision of land parcel number SIAYA/ABOM/669 into SIAYA/ABOM/4199 measuring approximately 4.85 hectares and SIAYA/ABOM/4200 measuring approximately 0.35 hectares. The 1st Respondent thereafter sold land parcel number SIAYA/ABOM/4200 to the 2nd Respondent JARED OWINO OYAYA without family consent and in total disregard of the Applicants' accrued rights. That the 1st and 2nd Respondents, together with their agents and hired miners, are actively carrying out gold mining activities on land parcel number SIAYA/ABOM/4199, involving excavation of deep pits, removal of top soil, destruction of crops, cutting of trees, and leaving open dangerous trenches on the land.

9 The applicants contend that the said mining activities are uncontrolled, unregulated, conducted without the Applicants' consent, and have resulted in waste, permanent degradation of the land, and serious danger to human life, livestock, and property. Photographs are annexed in this regard.

10 It is stated that several attempts to resolve this dispute through the Assistant Chief, the Chief, and the Department of Lands have failed. Documents evidencing the said failed attempts are annexed.



That unless the Court intervenes urgently, the Applicants and their families face imminent eviction, continued harassment, permanent loss of their ancestral land, and irreparable harm. That it is just, fair, and in the interest of justice that the Respondents be restrained and the suit land preserved pending determination of this matter.

RESPONSE

11 The application was opposed through a replying affidavit of Mathews Ogowa sworn on 2/02/2026. It is deponed that the respondent's late father, one Adongo Olali and who is the applicant's biological father, awarded the respondent the suit parcel SIAYA/ABOM/669 sometime in the year 1960 before the deponent got married. That he is therefore the registered proprietor. A copy of the green card is attached.

12 It is deponed that Vitalis Owembi Adongo, the 1st Applicant herein, is the deponent's biological brother who was awarded land parcel SIAYA/ABOM/674 where he resides todate therefore the allegations that he stays on the suit parcel are false. It is stated that Margaret Otieno, the 2nd Applicant herein who is the wife to the deponents late brother, was awarded the parcel SIAYA/ABOM/681 which she cultivates todate.

13 The deponent emphasises that he is the owner of the mother tittle which is subdivided herein and therefore owning a title deed means holding the official, legal document issued by the government that proves ownership. A copy of the title deed for parcel number SIAYA/ABOM/4199 is annexed. The deponent vehemently denies that the Applicants herein have acquired any rights over the suit property through adverse possession. At no point have the Applicants had exclusive possession of the suit property. The deponent confirms he is the one cultivating the parcel, has built homes for his sons therein and is also involved in various activities for economic gains which is confirmed by the Applicants.

14 The respondent states he has never abandoned the suit parcel and the Applicants' occupation have never been continuous and uninterrupted for the required 12 years. That the matter was reported to the Area Chief and the Applicants were ordered to move to their respective parcels but they completely refused to heed to the chief's orders. This act interrupted any alleged period of time. That the Applicants have acknowledged the deponents ownership on several occasions which negates their claim that the deponent was holding the parcel SIAYA/ABOM/669 to hold in trust on behalf of the family members is pure lies. That the Applicants have not shown a high probability of success in the main case. They cannot succeed through adverse possession since they haven't met the criteria required.

15 Further that the Applicants will not suffer irreparable harm or that any loss that can be adequately compensated by damages if the orders sought for are not issued. The inconvenience to the deponent if the injunction is granted is greater than the inconvenience to the Applicants if denied since he will loose use the parcel for economic gains. That the Applicant/Plaintiffs have not come to this court with clean hands and as such cannot claim equitable remedies herein.

16 The Applicant responded further through the affidavit of Vitalis Owembi Adongo and Margaret Otieno sworn on 10/2/2026. It is contended that the sub-division of SIAYA/ABOM/669 on 28th January 2020 was carried out after the Applicant's rights had long crystalized and was therefore illegal, void, and ineffective against accrued rights. That the sale and transfer of SIAYA/ABOM/4200 to the 2nd Respondent after adverse possession rights had crystalized over the land in favour of the Applicants and the 1st Respondent had no legal title to transfer to the 2nd respondent.

17 That the ongoing gold mining activities on SIAYA/ABOM/4199 amount to waste, environmental destruction, and danger to human life and livestock. That damages are not an adequate remedy for loss of ancestral land, destruction of graves, eviction of widows, and irreversible environmental



degradation. It is stated that the balance of convenience lies squarely in favour of preserving the suit land and restraining further acts of waste. That the 1st Respondent has approached this Honourable court with unclean hands, having concealed trust, family occupation, burials, and illegal sub-division. That the Replying Affidavit sworn by the 1st respondent is riddled with falsehoods, omissions, and calculated misrepresentation.

SUBMISSIONS

18 The applicants' submissions are dated 13/02/2026 and 6/3/2026 which were in further response to the respondents' submissions. The Respondents submissions are dated 25/02/2025

ANALYSIS AND DETERMINATION

19 I have considered the application, affidavits for and against the same as well as the submissions of the respective parties and the case law presented. I must observe that the submissions filed by the parties appear to have argued the merits of the Originating summons which is wrong. At this stage the court is not supposed to delve into the merits of the matter. It is therefore my view that the main issue at this interlocutory stage is whether the orders sought in the application should issue pending the determination of the suit.

20 The application is largely anchored under the provisions of Order 40 Rule 1(a) of the Civil Procedure Rules which speaks to the grant of orders of temporary injunction as follows; -

1. Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b).... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

21 The principles of granting temporary injunction were enunciated in the celebrated case of *Giella v. Cassman Brown* where the court stated the conditions for grant of interlocutory injunctions as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”

22 Has the Plaintiff/Applicant made out a prima facie case with a probability of success? In the case of *Mrao versus First American Bank of Kenya Limited & 2 Others* (2003) KLR 125, a prima facie case was described as follows:

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

23 The applicants claim to be a son and daughter in law of Adongo Olali who was the original owner of the parcel Siaya/Abom/669; 674 and 669. According to the applicants parcel 669 has always been the family homestead and has remained to be the ancestral home housing several children and grandchildren of the applicants having been born and lived therein. The applicants claim the parcel by



dint of adverse possession having lived on the parcel for over 45 years. It is stated that the 1st respondent has always harassed the 2nd applicant by trespassing into her homestead, cutting trees, denying her cultivation and even caused the arrest of her son.

24 It is further stated that the 1st respondent unlawfully caused the subdivision of parcel 699 into two portions where he sold one portion to the 1st respondent who thereafter sold the same to the 2nd respondent. All this is said to be without the consent of the applicant who had accrued rights over the parcel.

25 The respondent has presented to this court a copy of title deed for North Sakwa/Abom/4199 dated 21/5/2020. He also produced a green card for parcel North Sakwa/Abom/669 showing the 1st respondent as the registered owner of the suit property as at 21/12/83 and its closure in January 2020 due to the subdivision into parcels 4199 and 4200. Section 26 of the Land Registration Act 2012 provides that; -

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except –

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedural or through a corrupt scheme.”

26 While the applicants claim the parcel on the basis of customary trust and adverse possession and illegal subdivisions these are matters that can only be ascertained after hearing the parties and a determination made if the applicants will have proved their claim to the required standard. For now, at interlocutory stage title produced shall be treated as prima facie evidence that the 1st respondent was the owner of the mother title and had the authority to deal with the parcel as he pleased. Moreover, the applicant’s occupation of the suit property has been contested by the respondents and whether they are actually staying on the disputed suit property. I will refrain from delving into this issue for I must steer off the merits of the case.

27 It is my finding that based on the material placed before this court that the applicants have failed to establish a prima facie case.

28 Arising from the provisions of Order 40 cited above one of the objectives of grant of orders of injunction is to prevent a suit property from wastage. The 1st and 2nd respondents are said to have hired agents and workers who are carrying out gold mining activities on one of the subdivisions involving excavation of deep pits, removal of top soil destruction of crops, cutting of trees leaving open dangerous trenches on the land. That the said mining activities are unregulated and uncontrolled and have resulted in waste and permanent degradation. This is stated as wastage of the suit property.

29 I have looked at the photos vis the description of the activities mentioned above. Clearly the description and the magnitude given by the applicant’s vis a vis what is seen in the photos do not match. The photos do not depict the description given. Simply stated the description does not match the photos. Moreover, I have not seen any letter of complaint to the relevant authorities about the alleged illegal unregulated mining activities and their consequences and or potential danger.



30 An applicant must also demonstrate that they will suffer irreparable loss if the orders of injunction are not granted. The applicants state further that the parcel has been subdivided and sold to the respondents. They also fear that they will lose their customary heritage which they state is not compensable by way of general damages. It is also feared that the property will be charged and or further disposed with the consequence that it will be placed outside the reach of the court for implementing the court decree should their claim succeed.

31 I think at this point the court must look at the balance of convenience. The defendant holds title and does not deny that he is undertaking some economic activities on the suit property which based on the facts should be the alleged gold mining activities. I have already commented on the photos placed before court. As to loss of customary heritage this should await the substantive hearing. The court must also ensure the property is secured in view of the claim for adverse possession and trust. I think securing the register of the suit property by way of orders of inhibition will suffice.

32 The applicants have invited the court to grant declaratory orders that the subdivision herein is illegal and that the 1st and 2nd applicants be registered as proprietors of their rightful portions. The court has noted the robust submissions made on the law governing adverse possession and its applicability to the facts of this case. However, the court at this stage is cautioned against delving into the merits of the matter. My view of these orders is that they cannot be issued at interlocutory stage. Granting them will be to adjudicate the suit summarily without hearing the parties on the merits of the suit and specifically if the applicants are entitled or not to the parcels by dint of adverse possession and customary trust.

33 But having made the foregoing findings and having noted the balance of convenience tilts toward the need to secure the titles, it is trite that the environment and Land Court has the jurisdiction under the provisions of section 13 of the Environment & Land Court Act to make any orders for the ends of justice to be met. Considering the applicants claim for adverse possession the court is inclined to protect the parcel registers for the two subdivisions herein to ensure that they are protected from further disposal, subdivision or being charged and remain within the reach of this court should the applicants claim succeed.

34 The application dated 26/01/2026 is therefore disposed in the following terms.

1. The prayers 1, 2,3,4, 5, 6, 7 are declined.
2. An order of prohibition hereby issues that pending hearing and determination of the main suit an order of inhibition is hereby issued restricting the registration of any disposition in the registers of land parcels SIAYA/ABOM/4199 and SIAYA/ABOM 4200 (formerly SIAYA/ABOM/669).
3. All the parties are bonded to keep the peace
4. The costs of the application shall abide the outcome of the main suit.

Orders accordingly.

Ruling dated signed and delivered this 23rd day of April 2026

HON. JUSTICE A. E. DENA

JUDGE

23/04/2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:



Ms. Wochuna for the 1st Respondent

Mr. Onyata for the Applicants

Court assistant: Dorothy Awour

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