



REPUBLIC OF KENYA



KENYA LAW
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**Juma & another v Oburu (Environment and Land Case
E007 of 2025) [2025] KEELC 5563 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5563 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E007 OF 2025
LC KOMINGOI, J
JULY 24, 2025**

BETWEEN

AMINA RAMADHAN JUMA 1ST PLAINTIFF

DAVID OTWOMA 2ND PLAINTIFF

AND

BETHUEL WAWERU OBURU DEFENDANT

RULING

1. This Ruling is in respect to the Notice of Motion dated 15th January 2025 brought under Order 40 Rule 1, Order 53 Rule 3 of the [Civil Procedure Rules](#) and all other enabling provisions of the law. It seeks:
 - i. Spent.
 - ii. Spent.
 - iii. A temporary order of injunction be and is hereby issued restraining the Defendant/ Respondent whether by himself, his employees, agents, workers and or servants from destroying, alienating or undertaking any activities on Land parcel No. Kajiado/Olchoro-Onyore/27973 and/or interfering with the Applicants' quiet possession and use of the said property pending the hearing and final determination of the main suit.
 - iv. The Officer Commanding Station (OCS) Kiserian Police Station and the Officer Commanding Police Division (OCPD) Kisamis do assist in the peaceful execution of these orders.
 - v. The costs of this application be provided for.



2. The grounds are on the face of the application and are set out in paragraphs 1 to 7. The same is supported by the sworn Affidavit of David Otwoma. He claims that through a sale agreement dated 24th November 2018, he together with his wife the 1st Applicant; Land known as Kajiado/Olchoro Onyore/27972 from one Eunice Takaria Mbishi. This parcel together with Kajiado/Olchoro Onyore/27973 were subdivisions of Kajiado/Olchoro Onyore/27551. Prior to the purchase, they visited the suit property and were shown the location. Thereafter, they paid the entire purchase price, transfer effected and a title deed issued in their favour. In March 2019, they fenced the suit property and started developing it in April 2019 by planting trees and flowers around it. In October 2019, they put up a temporary house and engaged a casual employee to watch over it. In April 2020, they began the construction of a five bedroomed house upon getting approvals from the County Government of Kajiado. They continued developing and upon completion resided peacefully on the property and even buried their son thereon.
3. It was until sometime in July 2024, when the Defendant /Respondent informed them that they had settled and developed on the wrong property being Kajiado/Olchoro Onyore/27973 instead of 27972. Upon following up on the issue at the Lands Registry they found out that they were shown the wrong property and had actually developed parcel 27973 instead of parcel 27972 which had purchased. They tried resolving the matter amicably by having the titles rectified, but the Defendant/Respondent asked for payment of Kshs. 10,000,000. He claims that he pleaded with the Defendant/Respondent for an amicable resolution including use of the Area Chief and members of the Residents association with no success. The Defendant/Respondent threatened to destroy the suit property and served them with a demand notice. They therefore seek injunction to restrain him from interfering with their possession pending the hearing of this suit. It is their case that they have greatly invested on the suit property, including burying their son thereon and stand to suffer irreparable loss and damage.
4. The Defendant/Respondent in his Replying Affidavit stated that he entered a sale agreement on 26th September 2017 with Oibo Ole Kudate, Kirita Ole Nikawatei Kirau and Nkiwatei Ole Kerrau for the sale of parcel Kajiado/Olchoro Onyore/27973, paid the purchase price, transfer effected, and a title issued on 18th December 2017. Since he was mostly away on duty as a police officer, he states that he barely visited the parcel until sometime in June 2024 when he engaged an agent as he desired to sell it. The agent, during a site visit would found that the Plaintiffs/Applicants had developed his land. This fact was also established by a surveyor. He states that he later met the Plaintiffs/Applicants who indicated that they would need to verify the status with the Lands Registry, which they did and confirmed that he was indeed the owner of property 27973, which they had developed instead of his property 27972. He confirms that there were discussions to exchange properties, which he agreed to but required compensation because the terrain of 27972 was different from that of 27973. He avers that they agreed to engage their individual lawyers to formalise the discussions and during the process, he was informed by the 2nd Plaintiff/Applicant that he had lost his son and buried him on the suit property. The Defendant/Respondent claims that he questioned the circumstances of the burial noting that they were aware there was a dispute over that parcel of land. He then asked for Kshs. 5,500,000 as compensation. They were not able to agree and he asked them to vacate the suit property. He was later served with the pleadings in this suit.
5. The 2nd Plaintiff/Applicant in his Further Affidavit contested that the topography of the two parcels was different adding that if any, it was due to usage by people and vehicles. He also contested the claim that the Defendant/Respondent was not aware of his son's demise stating that this information was in the public domain and that the Defendant/Respondent even allowed them to use parcel 27972 to pitch tents to host people during the funeral. He admitted that the Defendant/Respondent sought compensation of Kshs.3,500,000/= which amounted to unjust enrichment. He added that



the Respondent's failure to raise any issue from the time he started developing the property in 2019 amounted to acquiescence and he was thus estopped from evicting him.

6. This application was canvassed by way of written submissions.

Submissions of the Applicants

7. On whether the Applicant was entitled to interim injunction as established in *Giella v. Cassman Brown & Co. Ltd* [1973] EA 358, counsel submitted that while acknowledging that the Respondent was the legal owner of parcel 27973, the Applicants mistakenly developed that parcel of land, the Respondent had asked for a hefty compensation which the Applicants could not afford. Counsel also went on to submit that the Respondent had acquiesced to the Applicants presence since he did not stop the developments from 2018 when the same began. The Plaintiff had thus established a prima facie case for grant of injunctive orders because there existed a right which was at the risk of being infringed citing *Mrao vs First American Bank of Kenya Limited & 2 others* (2003) KLR 125.
8. On whether the Applicants would suffer irreparable loss and damage, Counsel submitted that the Applicants had invested significantly in improving the suit property, and had also buried their son on the suit property. They therefore stood to suffer irreparable injury that cannot adequately be compensated by damages should if the property is demolished or eviction order issued.
9. On the balance of convenience, counsel submitted that it titled in favour of the Applicants since they would suffer greater harm if the orders are not issued. Reference was made to the cases of *Kanga v Abdullahi* [2024] KEELC 5441 (KLR), *Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & another* [2019] eKLR and *Embu County Government v. University of Embu* [2022].

Submissions of the Respondent

10. Counsel submitted that the Applicants had not established a prima facie case for the grant of reliefs sought because the alleged innocent mistake could not give them rights beyond the registered owners, notwithstanding the fact that they had developed the property. From the Affidavit in response of the Application, the Respondent has tried to engage the Applicants in coming to a reasonable solution but they had been unable to do so. Counsel argued that negotiations into compensation did not stop the respondent from claiming his right over the property nor did the 'hefty' compensation grant them Applicants right over the property. They had therefore not established a prima facie case.
11. On whether they would suffer irreparable loss, counsel submitted that the suit property was not the Applicant's despite the claim that they had mistakenly occupied it. Therefore, the person who stood to suffer loss was the Respondent who could not utilise his property for years.
12. On in whose favour the balance of convenience tilted, counsel submitted that it was in favour of the Respondent as the registered owner and the orders sought should not be granted.

Analysis and Determination

13. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and the authorities cited and find that the issue for determination are:
 - i. Whether the Plaintiffs/Applicants are entitled to grant of temporary injunction.
 - ii. Who should bear the costs of this application?
14. The Plaintiffs/Applicants seek a temporary injunction to restrain the Defendant/Respondent from interfering with their occupation and developments on Land Parcel No. Kajiado/Olchoro-



- Onyore/27973 which they acknowledge to have mistakenly developed thinking it was parcel 27972 which they had purchased.
15. The main issue for determination is whether the Plaintiffs/Applicants have met the threshold for the grant of a temporary injunction under Order 40 Rule 1 of the *Civil Procedure Rules* as set out in *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and subsequently enhanced by *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR.
 16. The principles governing the grant of interlocutory injunctions were set in the above cases as follows;
 - i. Whether the Applicants have establishment a prima facie case with a probability of success;
 - ii. Whether the applicant will suffer irreparable loss or injury which cannot be compensated by an award of damages;
 - iii. And if in doubt, the court should decide the matter on a balance of convenience.
 17. These three conditions ought to be considered sequentially and if one fails, the others cannot succeed.
 18. Have the applicants established that they have a prima facie case with probability of success?

In *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR), the Court held that

“a prima facie case is a case in 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...”
 19. A prima facie case is not about establishing a case on a probability of success but demonstrating that there exists a serious triable issue worthy of consideration by the court. The Plaintiffs/Applicants herein admit that the property they purchased was Kajiado/Ol Chore Onyore 27972, but they developed 27973 by mistake. The same is registered in the name of the Defendant/Respondent. Their basis for seeking injunctive relief is: They were shown the wrong property during the sale process; They have developed the land significantly, including fencing, constructing a house, and burying their son thereon; The Defendant/Respondent was aware of their developments since 2019 but failed to assert his rights until 2024; The Defendant/Respondent allegedly sought compensation, which they argue constitutes unjust enrichment since both parcels of land are the same.
 20. On the other hand, the Defendant/Respondent case is that, he is the registered owner of Kajiado/ Ol Choro Onyore 27973 since 2017; arguing that he discovered the Plaintiffs/Applicants presence only in 2024 when he engaged an agent to sell the property; and he engaged the Plaintiffs/Applicants with a view to compensation, with no success.
 21. The Plaintiffs /Applicants rely on the doctrine of proprietary estoppel and acquiescence, claiming that the Defendant/ Respondent stood by as they developed the land and thus should not be allowed to enforce his proprietary rights without first compensating them.
 22. However, under Kenyan law, the indefeasibility of title is protected under Section 26 of the *Land Registration Act*, meaning that the Defendant’s/Respondent’s title is protected unless acquired through fraud or illegality, neither of which is alleged here.
 23. Nonetheless, the Court finds that the claim raises arguable issues that should be considered. Therefore, this Court finds that the Plaintiffs/Applicants have demonstrated a prima facie case with a probability of success.



24. On whether the Applicants are likely to suffer irreparable loss which cannot be adequately compensated, the Plaintiffs/Applicants claim that they have developed the suit property substantially, erected a home, and buried their son thereon. While the law recognizes that damages are an adequate remedy where monetary compensation suffices, in this case, the Plaintiffs/Applicants claim that they have been on the suit property since 2018 and developed it as well as buried their child thereon. I find that it would be fair and just to protect the said development pending the hearing and determination of this suit.
25. I am satisfied that the Plaintiffs/Applicants have established that they stand to suffer irreparable injury if the injunction is not granted.
26. The issue of in whose favour does the balance of convenience tilts, this Court finds that it tilts on the Plaintiffs/Applicants who stand to suffer more harm should the court decline to grant the orders.
27. I therefore find that this application is merited and the same is allowed in the following terms;
 - i. That an order of temporary injunction is hereby issued restraining the Defendant/Respondent whether by himself, his employees, agents, workers and or servants from destroying, alienating or undertaking any activities on Land parcel No. Kajiado/Olchoro-Onyore/27973 and/or interfering with the Plaintiffs/Applicants' quiet possession and use of the said property pending the hearing and final determination this suit.
 - ii. That costs of this application shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF JULY 2025.

L. KOMINGOI

JUDGE.

In the presence of:

Ms. Kwega for the 1st, 2nd Plaintiffs/Applicants.

Mr. Isahi for the Defendant/Respondent.

Court Assistant – Mutisya.

