



**Mutai v Kiai (Environmental and Land Originating Summons
E025 of 2025) [2026] KEELC 2455 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2455 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E025 OF 2025**

MAO ODENY, J

APRIL 30, 2026

BETWEEN

DAVID KIPYEGON MUTAI PLAINTIFF

AND

ROBERT MUGEI KIAI DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion application dated 3rd December, 2025, by the Plaintiff/Applicant seeking the following orders:
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and determination of this suit inter-parties, the Honourable Court do issue a temporary injunction restraining the Respondent, his servants, agents, proxies and/or persons exercising authority from them from inhibiting, alienation, dealing, disposing, trespassing and/or in any other manner interfering with the Plaintiffs/Applicants quiet use. Occupation and possession of all those parcels of land known as NAKURU SAINO SETTLEMENT SCHEME/2612 measuring approximately 2.00Ha.
 - d. That costs of this application be provided for.
2. The application is grounded on the supporting affidavit of David Kipyegon Mutai the Applicant, who deponed that he is the beneficial owner of the parcel of land known as NAKURU SAINO SETTLEMENT SCHEME/2612, and has been in continuous occupation of the suit land for 27 years since 1998, and has been cultivating maize
3. The Applicant further deponed that the Respondent appeared with a title deed and claimed that he was the registered owner of the suit parcel. He stated that the Respondent had threatened to evict him



and would suffer irreparable injury if the application were not allowed. He urged the court to allow the application as prayed to preserve the subject matter.

Defendant's Response

4. The Respondent filed his replying affidavit sworn on 9th February, 2026, where he averred that he took possession of the suit land and has been in continued occupation since 1999, until it became unsafe due to ethnic hostility. It was his averment that in May 2025, he entered into a mutual agreement to exchange land with David Cheruiyot Bett to preserve his proprietary interests and avoid further conflict.
5. The Respondent deponed that the Applicant neither occupied, cultivated nor resided on the property prior to the current dispute. That the Applicant only entered the property after an ownership dispute was reported to the Directorate of Criminal Investigations (DCI). He stated that the Applicant produced a forged and fraudulent title deed dated 12th October, 2005.
6. The Respondent averred that the Applicant's claim for adverse possession was legally incompetent since the essential element of 12 years of exclusive possession without the owner's consent has not been met. Further, that the alleged possession by the Appellant was neither peaceful, open, nor uninterrupted, as it only commenced after the ownership was contested. He urged the court to dismiss the application.

Applicant's Submissions

7. Counsel for the applicants filed submissions dated 9th March 2026, and identified one issue for determination, as to whether the Applicant has met the threshold for the grant of a temporary injunction. Counsel relied on the case of *Star & Garters Restaurants & Another V National Bank of Kenya limited* [2019] eKLR, which cited the case of *Mrao Ltd V First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, and submitted that the Applicant has established a right to the suit property based on the doctrine of adverse possession as he has been in continuous and uninterrupted possession, occupation since 1998, a period exceeding the statutory 12 years.
8. Ms. Rotich further submitted that the Respondent under paragraph 5 and 6 of the Replying Affidavit admitted to not being in occupation/ possession of the subject property, relied on the case of *Wabala V Okumu* [1997] eKLR and submitted that the Respondent's claim of ownership through a title deed issued in 2005 is irrelevant at this stage.
9. It was counsel's submission that unless the order of injunction is issued the Applicant stands to suffer irreparable harm that cannot be compensated by damages and relied on the case of *James Kioo Ndonga V Shadrack Muthoka Kioo; Kakimu Joint Venture (Third Party)* [2021] eKLR. Further that the balance of convenience lies in favor of maintaining the status quo since the Applicant is in possession.
10. The Respondent's counsel told the court that they would rely on the replying affidavit, hence did not file submissions.

Analysis And Determination

11. The main issue for determination is whether the Applicant has met the threshold for the grant of temporary injunction pending hearing and determination of the suit. The principles for the grant of temporary injunctions are well settled as was stipulated in the case of *Giella V Cassman Brown & Co Ltd* 1973 EA 358. An Applicant must establish a prima facie case with a probability of success, that he/she will suffer irreparable harm if the order is not granted, and if the court is in doubt, it shall decide on a balance of convenience.



12. The Applicant claims beneficial ownership of the suit land vide the doctrine of adverse possession and is apprehensive that the Respondent may evict him from the suit land. The Respondent on the other hand contends that he is the registered legal owner of the suit land and that the Applicant only took advantage of the tribal clashes and took possession of the suit land.
13. In the case of *Nguruman Limited V Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal stated as follows:

“...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”
14. It is not in contention that the Respondent is the registered owner of the suit parcel of land as per the attached Certificate of Title issued on 12th October, 2005. The Applicant must establish a prima facie case before a court can grant an order of a temporary injunction can be granted. The Applicant must also meet all the limbs required to prove that he/she is entitled to such an order. A mere claim that the Respondent has threatened to evict the Applicant is not enough proof of a prima facie case with a probability of success to warrant the court to grant the order sought.
15. In the case of *Commercial Finance Co. Ltd V Afraha Education Society & Others C A Civil Appeal No. 142 of 1999* the court held that:

“...the judge should address himself sequentially on the conditions for granting an injunction instead of proceeding straight away to address himself on the third condition because where the Applicant has no registered interest in the land comprised in the title dispute and thereof has not demonstrated that it has a prima facie case with a probability of success, no interlocutory injunction would be available.”
16. The Applicant has failed to meet the threshold for grant of a temporary injunction, and therefore the Application is dismissed with costs in the cause. The Applicant to fast track the hearing of the case.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF APRIL 2026.

M. A. ODENY

JUDGE

