

REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT KILGORIS
ELCC (OS) E021 OF 2025

RAPHAEL _____ **OLE**
SANKALE.....PLAINTIFF/APPLICANT

VERSUS

PARIKEN _____ **OLE**
NGIROO.....DEFENDANT/RESPONDENT

RULING

1. Coming up for determination is the application dated 19th September 2025, in which the Applicant Raphael Ole Sankale, seeks the substantive orders to restrain the Defendant, as well as the District Land Registrar and District Surveyor Kilgoris, their servants, agents and/or any person from subdividing and/or surveying in any way parcel known as Transmara/Moita/65 measuring approximately 7.47 hectares situated in what is now known as Transmara/Moita/702 pending determination of the suit.
2. The said substantive prayer is sought on the strength of grounds interalia that; -
 - (i) The Plaintiff purchased 7 acres out of parcel known as Transmara/Moita/65 measuring 7.47 hectares are now known as Transmara/Moita/702.
 - (ii) The Defendant has refused to transfer the 7 acres into the Plaintiff's name and has changed the stratum of the subject matter and intends for the boundaries to be re-established.
 - (iii) The Applicant stands to suffer irreparable loss and damages if the orders sought are not granted.
3. In further support of the application, is the supporting affidavit of the Applicant where at the deponent reiterates the grounds in support of the application and has annexed a copy of the agreement for sale, photographs of development on the suit property.

4. The application was opposed by the Replying affidavit of the Defendant/Respondent Mr. Parken Ole Ngiro in which he deposes interalia,
 - (i) that the Plaintiff/Applicant is an owner of a different parcel known as Transmara/Moita/701, registered in the names of Loice Konchellah and Cyrus Odupoi Waupany and
 - (ii) that the Plaintiff encroached his suit land that he had sold to a different person namely Francis Oleu Waupany.
5. The other depositions in the Replying affidavit relate to the Originating summons, including the depositions that the suit property was sold in 2018 and hence 12 years period for adverse possession has not crystalized and the deposition that one cannot claim adverse possession on a property that they claim to have purchased.
6. The Application was canvassed by way of written submissions, that the court has considered.
7. Arising from the application, the rival affidavits, and submissions and upon consideration of the authorities cited by the parties and the law generally, the court frames the issue for determination, as to
 - (i) Whether or not the application is merited, and in deciding this issue the court shall decide whether or not the application meets the threshold for grant of a temporary interlocutory injunction.
 - (ii) What reliefs ought to issue.
 - (iii) Who bears the cost of the application.

Analysis and Determination

8. Both parties agree on the principles for grant of an interlocutory injunction each party having cited the decision of Giella Vs. Cassman Brown which stated the said principles, which are, ***“Firstly, an Applicant must show a prima facie case with a probability of success, secondly an interlocutory injunction will not normally be 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***

9. The court shall determine whether a prima facie case has been established. A prima facie was defined in the decision in Mrao Limited Vs. First American Bank Ltd as follows, **“which on the material presented, a tribunal properly directing itself will conclude that there exists a right which is apparently been infringed by the opposite party so as to call for an explanation or rebuttal from the later.... A prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right and the probability of success of the Applicants case upon trial. That is clearly a standard which is higher than an arguable case...”**
10. Has the Applicant demonstrated a right that has been infringed at this interlocutory stage.
11. The Applicant’s case is premised on adverse possession, by virtue of a purchase and occupation of the suit property. The purchase having been made on or about 21st June 2011.
12. The Respondent has denied the alleged sale averring that the Plaintiff’s property is an adjacent parcel to wit Transmara/Moita/701 and that Transmara/Moita/702 belongs to a different party, a copy of a title of the Transmara/Moita/702 exhibited shows that the suit property is registered to 3rd parties who are not parties to the suit herein.
13. In so far as Transmara/Moita/702 is registered in the name of 3rd parties who are not parties to the suit herein, the Plaintiff has not demonstrated an infringement of any right by the Defendant at the interlocutory stage so as to call for a rebuttal.
14. Moreover, the suit property has already subdivided from Transmara/Moita/65 and it is now Transmara/Moita/702, and the court finds that the Applicant has not established a prima facie case.
15. Having not established a prima facie case with probability of success, the court is not required to inquire on the remaining principles in Giella Vs. Cassman Brown Limited; as was held in Kenya Commercial Finance Company Ltd. Vs. Afraha Education Society (2001) I.E.A 86 where the court held *intaralia*, **“if prima facie case is not established then**

irreparable injury and balance of convenience need no consideration”.

16. In that regard the application having failed to meet the conditions for grant of temporary injunction is thus non-merited and is destined to fail.
17. The Applicant has however deponed of taking possession of suit land as well as developed the same pursuant to an Agreement for sale, these depositions were not challenged specifically in the Replying affidavit, the photographs were not said to have been of a different parcel, and thus in order to preserve the suit property, an order for maintenance of status quo hereby issues, in terms that the current occupier of the suit property to remain in possession, while the register of Transmara/Moita/702 to remain intact, in the name of the current registered owner pending hearing and determination of the suit.
18. Costs shall be in the cause.

Dated at Kilgoris this 30th day of April 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA - Sylvia/Clara

Ms. Njoki h/b for Miruka for Defendant/Respondent

N/A for Applicants