



REPUBLIC OF KENYA



KENYA LAW
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**Magambo v Omariba & 4 others (Environment and Land Case
E007 of 2026) [2026] KEELC 2829 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2829 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE E007 OF 2026**

E ASATI, J

MAY 7, 2026

BETWEEN

DAN ODUOR MAGAMBO PLAINTIFF

AND

KEFA ANGWENYI OMARIBA 1ST DEFENDANT

JACOB OCHIENG ALOLA 2ND DEFENDANT

EMILY AKINYI OMINDO 3RD DEFENDANT

THE LAND REGISTRAR, KISUMU 4TH DEFENDANT

THE REGIONAL SURVEYOR, KISUMU COUNTY 5TH DEFENDANT

RULING

1. The Notice of Motion application dated 10th February, 2026 seeks for orders of temporary injunction restraining the 1st Defendant/Respondent, his servants, agents or employees from entering upon, remaining on, constructing, developing, alienating, disposing of, or in any way interfering with the Plaintiff's quiet possession and ownership of land reference number Kisumu/Konya/9164 and for an order compelling the 4th and 5th Defendants/Respondents to produce and place before the honourable court the parcelling report for Land No. Kisumu/Konya/2750 detailing;
 - a. The original parcel number(s) of the parcels of land, particularly land reference number Kisumu/Konya/2750.
 - b. The new parcel numbers that were created after subdivision of number Kisumu/Konya/2750
 - c. Acreage/area of each parcel;
 - d. Survey measurements and coordinates



- e. Boundary details
- f. Survey maps and mutation forms
- g. Confirmation that the survey complies with the [Survey Act](#) (Cap 299) and land regulations.

The application also seeks that the costs be borne by the Respondents.

2. The grounds upon which the application was brought are that the Applicant is the proprietor of a land parcel known as Kisumu/Konya/9164. That the 1st Respondent caused an unlawful resurvey to be conducted on the basis of which the 1st Respondent unlawfully entered the Plaintiff's property and commenced development thereon without any colour of right and without the Plaintiff's consent. That the 1st Respondent has failed and/or refused to heed notices from the Plaintiff requiring him to cease his unlawful actions and vacate the suit land. The application was supported by the contents of the Supporting Affidavit sworn by the Plaintiff/Applicant on 10th February, 2024.
3. The application was opposed. The 1st Respondent filed grounds of opposition dated 16th February, 2026. The case of the 1st Respondent is that the Applicant has not met the requirements of grant of the interlocutory orders sought. That the issue of boundary, which has been placed before this court for determination, had been effectively adjudicated upon by the 4th Defendant, the Land Registrar, Kisumu, and that no one has challenged the decision.

That the balance of convenience favours the 1st Respondent, who has put in massive resources on his land No. Kisumu/Konya/9031, which should not go to waste.

4. The application was heard by way of written submissions.

It was submitted on behalf of the Applicant vide the written submissions dated 24th February, 2026 filed by the firm of Alphonse Barrack Advocate that the 1st Defendant without any colour of right, has unlawfully entered the Applicant's land parcel No. Kisumu/Konya/9164 is developing the same despite the Applicant's objections.

That the Applicant's legal title to the suit property has never been transferred by anyone. That the 1st Defendant's land parcel No. Kisumu/Konya/4338 does not border the suit land, but due to an illegal resurvey, the 1st Defendant subsumed the suit property as his own and began developing it without regard to the Applicant's proprietary interest.

That the Surveyor's report dated 10th February, 2025, shows that the 1st Defendant unlawfully entered the Applicant's land and began construction thereon.

5. Counsel submitted that the Applicant's proprietary rights over the suit land are protected under sections 24, 25, and 26 of the [Land Registration Act](#) and that the entry of the 1st Defendant onto the suit land is a clear infringement of the Applicant's rights.

Relying on the case of *Nguruman Limited v Bonde Nielsen & 2 Others* (2014)eKLR, Counsel submitted that where an applicant's rights have been violated in clear terms and where the impugned actions threaten ongoing loss or disruption, the matter warrants immediate intervention to prevent further prejudice.

Counsel submitted that the harm the Applicant is facing is substantial and incapable of precise monetary qualification. That monetary compensation cannot restore the Applicant's quiet possession once the land is permanently altered by the ongoing construction and development.



6. Counsel submitted further that as the Plaintiff/Applicant is the registered owner of the suit land, granting the order of temporary injunction sought would merely preserve the status quo pending the hearing and determination of the suit. That the balance of convenience lies in granting the interim orders sought.

Regarding the prayer for compelling the 4th and 5th Defendants to produce the parcelling report for land parcel No. Kisumu/Konya/2750, Counsel submitted that the dispute before the court concerns illegal and irregular re-surveys that have affected the ground position and boundaries of the suit property.

That the true purpose of discovery is to level the playing field of litigation, expedite the hearing, reduce costs, and allow parties to gauge the case they will face at the trial.

Counsel referred to Halsbury's Laws of England, Volume 13, paragraph 1 to support the submissions.

7. Counsel submitted that the court is vested with inherent jurisdiction and statutory mandate under Section 1A, 1B, and 3A of the Civil Procedure Act to make such orders as may be necessary for the ends of justice and to ensure the just and expeditious and proportionate determination of disputes.

That it is just equitable and in furtherance of the overriding objective of the Civil Procedure Act that the court allows the prayer to compel the 4th and 5th Defendants to produce the complete parcelling report and related survey records of land parcel No. Kisumu/Konya/2750.

Counsel urged the court to allow the application.

On behalf of the 1st Respondent, written submissions dated 16th March, 2026, were filed by the firm of Omondi Abande & Company Advocates.

8. On whether or not a prima facie case with a probability of success had been demonstrated, Counsel submitted that the Applicant had not demonstrated any infringement of his proprietary rights. That the evidence on record shows that the 1st Respondent was the owner of land parcel No. Kisumu/Konya/9030, while the Applicant is the owner of Kisumu/Konya/9164, parcels of land which do not share a common boundary and are separately fenced on the ground. That the Applicant's parcel arose from a subdivision in 2019, long after the existence of the 1st Respondent's parcel of land.

9. That the 1st Respondent's title to land parcel No. Kisumu/Konya/9030 is protected by Section 26(1) of the Land Registration Act. That the Applicant is seeking to retrain the 1st Respondent from using his own land. That the survey relied upon by the Applicant was never conducted.

That the 1st Respondent has been in possession of the property since 2019 and has constructed a 4-storey building with the necessary approvals, and that the Applicant has waited several years before approaching the court.

That the Applicant has failed to establish a prima facie case with a probability of success.

10. Counsel submitted further that it is the 1st Respondent who stands to suffer substantial loss if the orders sought are granted. That the Applicant failed to demonstrate that he will suffer irreparable harm incapable of being compensated by damages, should the orders sought be declined.

That the balance of convenience overwhelmingly tilts in favour of the 1st Respondent.

Counsel urged the court to dismiss the application with costs.

The 1st Respondent also filed Supplementary submissions.

11. On behalf of the 2nd and 3rd Respondents, written submissions dated 4th March, 2026, were filed by Moses J.A. Orenge, Advocate. Counsel relied on the cases of *Giella v Casman Brown & Co. Ltd*



(1973) E.A. 358 and Mrao Ltd v First American Bank of Kenya Ltd and 2 Others (2003)KLR 125 on principles for grant of interlocutory injunction and the definition of a prima facie case.

Further Counsel cited the case of Nguruman Ltd v Jan Bonde Nielsen & 2 Other (Nairobi Court of Appeal Civil Appeal No.77 of 2012) [2014]eKLR where it was held that if a prima facie case is not established, then irreparable injury and balance of convenience need no consideration and that temporary injunction should never issue when an action for an award of damages would adequately compensate the injuries threatened or caused.

12. That the 2nd and 3rd Respondents have, based on the findings and recommendations in the Plaintiff's survey report, proposed that the only solution to the dispute is to use the original maps to identify and determine the original land parcel No. Kisumu/Konya/2750 and the original land parcel No. Kisumu/Konya/4338 and the access road separating them.

That there is a problem on the ground, which problem affects the 2nd and 3rd Defendants' title to their land parcel No. Kisumu/Konya/9163, and that in the circumstances, it is fair and just that the status quo be maintained.

That there is prima facie evidence that the rights of the Plaintiff, as well as those of the 2nd and 3rd Respondents, have been infringed. That it is in the interest of justice that the status quo be maintained.

13. I have considered the application, the responses thereto, and the written submissions filed. Two substantive orders are sought in the application. The first one is an order of temporary injunction. As submitted by both parties, the grounds for grant of an order of temporary injunction are those stated in the case of Giella vs Cassman Brown Co. Ltd (1973) 358 that the Applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience. A prima facie case was defined by the Court of Appeal in Mrao Ltd vs First American Bank Kenya Ltd & 2 Others [2003] eKLR as:

“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.”

14. Further, Order 40 Rule 1 of the Civil Procedure Rules 2010, pursuant to which the application was brought, makes provision that where it is proved by Affidavit or otherwise, 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, the court may, by order, grant a temporary injunction to restrain such act.
15. The Applicant exhibited a title deed for the land he claims, namely, Kisumu/Konya/9164, to show that the land is registered in his name. He also exhibited a diagnostic analysis report by the County Surveyor, County Government of Kisumu. He deposed that, according to the said survey report, the position of his land parcel number Kisumu/Konya/9164 on the ground was subjected to a second irregular resurvey, pursuant to which the 1st Respondent proceeded to take the ground position of his (Applicant's) land.
16. The 1st Respondent denied this allegation and claimed that his activities were confined to his land. For this, he relied on a surveyor report by Patrick Opiyo dated 26th October 2025 to the effect that the developments in parcel No Kisumu/Konya/9029 and 9030 had not encroached into any other plot.



The court is therefore confronted with two survey reports, each portraying a different position on whether or not the construction complained of is on the applicant's land or the 1st Respondent's land. The report by the 1st Respondent's surveyor faults the surveyor who did the report for the applicant on the grounds that the surveyor may have used an RIM, which is not an authority to identify the plaintiff's land. On the other hand, the surveyor's report presented by the Plaintiff supported the Plaintiff's claim and gave recommendations. These are matters to be determined at the hearing upon interrogation of the evidence to be produced. At this interlocutory stage, the concern of the court is to preserve the subject matter of the suit, where it is demonstrated on a prima facie basis that there is a need to do so.

The purpose of an order of interlocutory injunction is to temporarily stop wastage, damage, or alienation of the suit land pending the hearing and the suit.

17. Having considered all the facts of the case, I find that the Plaintiff has demonstrated a prima facie case with a probability of success. The prayer for an order of temporary injunction is merited.
18. Regarding the second order sought, namely, an order for the production of documents and information, as the prayer was not opposed by the 4th and 5th Defendants to whom it is directed, I find that the prayer is merited and hereby allow it.

The application is allowed in terms of prayers c) and d) thereof as follows:

- i. An order of temporary injunction restraining the 1st Defendant/Respondent, his servants, agents, or employees from constructing, developing, alienating, or in any way disposing of land reference number Kisumu/Konya/9164 pending hearing and determination of the suit.
 - ii. An order compelling the 4th and 5th Defendants/Respondents to produce and place before the honourable court the parcelling report for Land No. Kisumu/Konya/2750 detailing;
 - a. The original parcel number(s) of the parcels of land, particularly land reference number Kisumu/Konya/2750.
 - b. The new parcel numbers that were created after subdivision of number Kisumu/Konya/2750
 - c. Acreage/area of each parcel;
 - d. Survey measurements and coordinates
 - e. Boundary details
 - f. Survey maps and mutation forms in respect of Kisumu/Konya/2750
 - g. Confirmation that the survey complies with the Survey Act (Cap 299) and land regulations.
 - ii. Costs of the application shall be in the main suit.
- Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, READ THIS 7TH DAY OF MAY, 2026, VIRTUALLY, THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

**E. ASATI,
JUDGE.**



In the presence of

Atika.. Court Assistant

Barrack acting with Fiona Advocates for the Applicant.

No appearance for the 1st Respondent.

Orengo, Advocate for the 2nd & 3rd Respondents.

No appearance for the 4th and 5th Respondents.

