



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rono v Rotich (Environmental and Land Originating Summons  
E012 of 2024) [2025] KEELC 641 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 641 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2024**  
**GMA ONGONDO, J**  
**FEBRUARY 18, 2025**

**BETWEEN**

**THOMAS KIPLAGAT RONO ..... PLAINTIFF**

**AND**

**WILLIAM KIPCHUMBA ROTICH ..... DEFENDANT**

**RULING**

1. By a Notice of Motion application dated 7<sup>th</sup> November 2024, the plaintiff/applicant through Joseph C K Cheptarus and Company Advocates is seeking the following orders;
  - a. Spent
  - b. Spent
  - c. Pending the hearing of the main suit, an order of temporary injunction be and is hereby granted to restrain the defendant by himself his agents or servants or whomsoever from trespassing using force to enter into, grazing cows, destroying the fence, nappier grass, barbed wire, fencing materials , creating new boundary fence, interfering with, using occupying possessing and making any other land of developments including putting up new fence/boundary in respect of the plaintiff's portion of land namely 1.6 acres of land out of the parcel of land Nandi/ Ndurio/452 (The suit land) contrary to and against the plaintiff's continuous uninterrupted possession, occupation and use of that land for a period of more that twelve(12) years since 1980s to date.
  - d. Costs to the Plaintiff/Applicant.
2. The underlying support of the application is the applicant's affidavit of even date. Also, the application is founded upon thirteen grounds, inter alia;



- a. The plaintiff purchased and /or has been in occupation possession and use of 1.6 acres of the whole suit land approximately area 7.2 hectares in area ever since the date of purchase to date.
  - b. On 26.4.2024 the suit land was registered in the name of the defendant according to the copy of the title deed the defendant supplied to the plaintiff.
  - c. The plaintiff's current problems with the defendant arose after the defendant entered into the plaintiff's portion of 1.6 acres of that land and/or damaged/destroyed the plaintiff's fence by pulling the same down, creating a new boundary and putting up the defendant's own fence within the plaintiff's land (1.6 acres) blocked the plaintiff from accessing part of the 1.6 acres of land and nippier grass in that land and .or by causing the defendant's cows to graze on the plaintiff's nappier grass and/or cutting such grass down against the plaintiff's will.
3. The respondent through Rotich, Langat and Partners Advocates, opposed the application by way of a replying affidavit of fifteen paragraphs sworn on 13<sup>th</sup> January 2025 and referred to his preliminary objection of even date. He averred in part;
    - a. That the application 7/11/2024 and the main suit are vexatious, malicious and an abuse of the court process since they offend the provisions of Section 7 of the *Limitation of Actions Act* as the title being challenged was issued on 26/04/2024 hence the applicant cannot claim adverse possession on the suit land.
    - b. That to prevent miscarriage of justice, the Honourable court directs and orders that status quo be maintained and the applicant to maintain his occupancy of 0.3 acres of the suit land.
  4. In the preliminary objection, the respondent termed the applicant's claim bad in law to the extent that;
    - a. The Honourable Court is barred from trying this suit as it offends the provisions of Section 7 of the Limitation of Actions CAP 22 Laws of Kenya since this suit does not satisfy the threshold for adverse possession.
    - b. The Title Deed of the suit land was issued on 26.04.2024.
    - c. The suit does not satisfy the threshold for adverse possession since 12 years start to run from 26.04.2024.
    - d. The suit is frivolous and vexatious and as such amounts to an abuse of the court process.
    - e. Consequently, the Defendant prays that the Plaintiff's suit be dismissed with costs for being an abuse of the court process and for the grounds listed above.
  5. On 10<sup>th</sup> December 2025, the court directed that the application be heard by oral submissions.
  6. Accordingly, on 27<sup>th</sup> January 2025, Mr Cheptarus learned counsel for the applicant orally submitted in part that the applicant purchased 1.6 acres of land as per the agreement annexed to the application from the respondent's father who initiated consent thereof. That the respondent obtained title to the suit land on 26<sup>th</sup> April 2024. That the applicant may applicant may suffer prejudice and had established a prima facie case against the respondent herein and that on the balance of convenience, the orders sought in the application be granted. Counsel referred to the orders sought in the application, the grounds and supporting affidavit together with bundle of annexures thereto and the case of *Giella-vs-Cassman Brown (1973) EA 328* to reinforce the submissions.
  7. On his part, Mr Rotich learned counsel for the respondent submitted, inter alia, that as admitted by the applicant, the respondent acquired ownership of the suit land through purchase on 26<sup>th</sup> April 2024



hence, the entire application and the suit offends sections 7 and 38 of the Limitation of Actions Act (Cap 22) and Order 37 Rules 7, 14 and 15 of the Civil Procedure Rules 2010. Counsel relied on the replying affidavit, the preliminary objection as well as the principles of injunctions which have not been established. That the application is mere puff and the photos annexed to the application show a clear boundary of the portion of the suit land thus status quo be maintained in terms of the fence thereof pending the determination of the suit on merits.

8. Having considered the entire application, the replying affidavit, the preliminary objection and the submissions, the issues for determination are condensed to whether;
  - a. The preliminary objection is tenable.
  - b. Subject to issue (a) hereinabove, the applicant is deserving the orders sought in the application.
9. The defendant/respondent asserts in the preliminary objection that the present suit offends the provisions of section 7 of the Limitation of Actions Act Chapter 22 Laws of Kenya since it does not satisfy the threshold for adverse possession. Notably, the said section relates to actions to recover land and the ingredients of adverse possession are well settled; see *Wambugu-vs-Njuguna* (1983) KLR 172 and *Mtana Lewa-vs-Kahindi Ngala Mwangandi* 2015 eKLR.
10. In the case of *Mukisa Biscuit Manufacturing Co. Ltd-vs-West End distributors* (1969) EA 696, the Court of Appeal remarked;

‘.....A preliminary objection consists of a point of which has been pleaded or which raises by clear implication out of pleadings and if argued as a preliminary objection will dispose of the suit. Examples are.....a plea of limitation.....’
11. It is noted that the preliminary objection is a plea of limitation regarding the acquisition of the suit land, It is highly contested; see also *Oraro-vs-Mbaja* (2005) KLR 141.
12. So, the preliminary objection is not sustainable as the contested issues have to be addressed during the hearing of the suit has on merit. I subscribe to the case of *Philip Chemwolo and another-vs-Augustine Kubende* (1986) eKLR, where the Court of Appeal was emphatic thus;

‘.....allow the parties to go for trial on the issues in this suit.....’
13. On the second issue, this court is guided by Order 40 (supra) on temporary injunctions and temporary orders as well as the triple pillars on which rests the foundation of any order of injunction which are to be applied separately, distinctly, logically and sequentially; see *Giella case* (supra) and *Nguruman Ltd-vs-Jan Bonde Nielsen* (2014) eKLR.
14. It is common ground that the applicant purchased a portion of the suit land and the existence a boundary or survey work on it. Learned counsel for the respondent submitted for an order of status quo over the suit land the terms of the fence and the present occupation thereof.
15. Further, it is trite law that status quo order is meant to preserve the suit property pending the outcome of the matter; see *Ogada-vs-Mollin* (2009) KLR 620.
16. Furthermore, this court has the mandate to grant interim preservation orders including status quo as provided for under section 13 of the *Environment and Land Court Act* 2015 (2011).
17. A fortiori, being guided by sections 3 and 3A of the Civil Procedure Act Chapter 21 Laws of Kenya, section 3 of the Environment and Land Court Act 2015 (2011) and the decision in *Musa Angira Angira-vs- ICDC* (2015) eKLR to meet the ends of justice, it is hereby ordered and directed as follows;



- a. The preliminary objection is disallowed.
- b. status quo prevailing on the suit land in terms of the parties' occupancy and the fence thereof, be maintained by both parties in lieu of the injunctive order sought in the application pending the hearing and determination of this suit. In particular, there shall be no sale, charge, transfer, sub division or erection of new fence or permanent structures and or buildings thereon pending the outcome of the suit.
- c. Costs of the application be in the cause

18. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 18<sup>TH</sup> DAY OF FEBRUARY 2025.**

**GEORGE M A ONGONDO**

**JUDGE**

Present;

Mr Cheptarus learned counsel for the applicant/plaintiff

Mr Rotich learned counsel for the respondent/defendant

Walter, court assistant

