



**Kinyanjui & 3 others (Suing as the Administrators of the Estate of Johnson Joshua Kinyanjui, Deceased) v Thiongo (Sued as the Administrator of the Estate of Dedan Thiongo Kingangi) (Environmental and Land Originating Summons 71 of 2024) [2025] KEELC 3560 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 3560 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 71 OF 2024**

**JG KEMEI, J**

**FEBRUARY 13, 2025**

**BETWEEN**

**ALICE MERCY NJERI KINYANJUI ..... 1<sup>ST</sup> PLAINTIFF  
JACQUELINE J WANJIKU KINYANJUI ..... 2<sup>ND</sup> PLAINTIFF  
JOY WANJIRU KINYANJUI ..... 3<sup>RD</sup> PLAINTIFF  
JOE MUCHAI KINYANJUI ..... 4<sup>TH</sup> PLAINTIFF  
SUING AS THE ADMINISTRATORS OF THE ESTATE OF JOHNSON JOSHUA  
KINYANJUI, DECEASED**

**AND**

**JANE WANJIRU THIONGO ..... DEFENDANT  
SUED AS THE ADMINISTRATOR OF THE ESTATE OF DEDAN THIONGO  
KINGANGI**

**RULING**

(in respect to the applicants’ application dated 16/11/24 seeking temporary orders of injunction against the Respondent)

1. What is before me is the application dated the 16/11/24 filed by the Applicants seeking the following orders;
  - a. Spent
  - b. That pending the hearing and determination of this application inter parties, an order of temporary injunction do issue restraining the Defendant/Respondent whether by herself, her



proxies, servants, agents or otherwise whomsoever from transferring, assigning, disposing of, dissipating, advertising for sale and/or alienating and/or disposing off, selling by public auction or completing any conveyance or transfer of any sale concluded by auction or private treaty or from in any other manner whatsoever or howsoever dealing and/or interfering with the Plaintiffs' actual and/or constructive occupation and/or possession of all those parcels of land known as Title No. Nairobi Block 131/1248 (Originally L.R. No. Dagoretti/Uthiru/1248) and Title No. Nairobi/Block 131/1249 (Originally L.R. No. Dagoretti/Uthiru/1249).

- c. That in the alternative an order of status quo do issue preserving the Plaintiff's actual, constructive and adverse possession of all those parcels of land known as Title No. Nairobi Block 131/1248 (Originally L.R. No. Dagoretti/Uthiru/1248) and Title No. Nairobi/Block 131/1249 (Originally L.R. No. Dagoretti/Uthiru/1249), pending the inter partes hearing and determination of this Application.
  - d. That pending the hearing and final determination of this suit, an order of temporary injunction do issue restraining the Defendant/Respondent whether by herself, her proxies, servants, agents or otherwise whomsoever from transferring, assigning, disposing of, dissipating, advertising for sale and/or alienating and/or disposing off, selling by public auction or completing any conveyance or transfer of any sale concluded by auction or private treaty or from in any other manner whatsoever or howsoever dealing and/or interfering with the Plaintiffs' actual and/or constructive occupation and/or possession of all those parcels of land known as Title No. Nairobi Block 131/1248 (Originally L.R. No. Dagoretti/Uthiru/1248) and Title No. Nairobi/Block 131/1249 (Originally L.R. No. Dagoretti/Uthiru/1249), and in the alternative an order of status quo do issue preserving the Plaintiff's actual, constructive and adverse possession of all those parcels of land known as Title No. Nairobi Block 131/1248 (Originally L.R. No. Dagoretti/Uthiru/1248) and Title No. Nairobi/Block 131/1249 (Originally L.R. No. Dagoretti/Uthiru/1249), pending the hearing and determination of this suit.
  - e. That an order be made under the doctrine of lis pendens and Section 106 of the [Land Registration Act](#), previously enshrined under Section 52 of the Indian Transfer Property Act (1959) (repealed) that during the pendency of this suit, all further registration or change of registration in the ownership, leasing, subleasing, allotment, user, occupation or possession or in any kind of right, title or interest in the charged properties with any land registry, Government department and all other registering authorities is hereby prohibited in all those parcels of land known as Title No. Nairobi Block 131/1248 (Originally L.R. No. Dagoretti/Uthiru/1248) and Title No. Nairobi/Block 131/1249 (Originally L.R. No. Dagoretti/Uthiru/1249).
  - f. That the costs of this Application be provided for and be borne by the Defendant.
2. The application is premised on the grounds annexed thereto and the Supporting affidavit of Alice Mercy Njeri Kinyanjui sworn on even date.
  3. The deponent averred that the Respondent is at the verge of evicting the Applicants and their tenant namely KAG Church from the suit lands, a situation that she alleges will cause a breach of the peace in the community.
  4. By way of background, she stated that vide a memorandum of understanding (MOU) dated the 24/3/98 in which Johnson Joshua Kinyanjui (Kinyanjui) purchased the suit land from Dedan Thiongo Kingangi (Kingangi), both deceased and fathers of the parties before the Court.



5. That pursuant to the said MOU, Kinyanjui took possession of the land to date and that Kingangi took no steps to interrupt his occupation. Later KAG Church offered to purchase the Land from Kinyanjui for purposes of extra parking space for its congregants and construction of additional facilities for the church. That Kingangi put KAG church in possession of the land in 2007 hence retaining actual and constructive possession and occupation of the said suit lands who fenced and develop it. Vide a sale agreement dated the 5/5/2020 KAG church offered to purchase the suit lands from the late Kinyanjui. That the respondent filed a suit in MCELC No 92 of 2022 against Kinyanjui which suit suffered the fate of dismissal by reason that it was filed against a dead person. Unrelenting, the Respondent filed another suit No MCELC No 479 OF 2023 seeking declaratory orders of title and cancellation of the title in the name of Kinyanjui and registration of the same in their favour. In opposing the suit, the Applicants raised a claim of adverse possession. The trial Court in its judgement delivered on 11/10/24 determined the suit in favour of the Respondent with the matter of adverse possession having been reserved for the determination by the ELC Court that is seized of jurisdiction hence triggering the instant suit.
6. Further the Applicants aver that they have established a prima facie case with a chance of success and unless the orders are issued they will be exposed to irreparable harm and that the balance of convenience tilts in their favour and that there is no prejudice whatsoever that will be suffered by the respondent having not been in possession of the suit land.
7. In their submissions the Applicants have argued that their father Kinyanjui and his successors enjoyed exclusive possession of the suit since 2003; occupation was non-permissive, visible open and notorious. On irreparable harm, the Applicants argue that if the orders sought are not granted they shall be exposed to lose their right to title in the land as well as possible third party claims from KAG Church to whom they have since sold the land to. Finally that the balance of convenience tilts in their favour and urged the Court to so grant the orders.
8. The respondent submitted that the respondent is in possession of the suit land pursuant to the judgement of the Court. She has argued that the Plaintiffs are not in possession but through KAG Church as trespassers. That in any event KAG only occupied the suit land since 2020 and therefore the period cannot meet the threshold for founding title by adverse possession. That for that reason the Applicants have not demonstrated a prima facie case with a chance of success. On balance of convenience it was argued that since the respondent is the registered owner of the suit land the scales tilts against allowing the application.
9. The Respondent opposed the application vide her Replying Affidavit sworn on 27/1/25 and gave a detailed history of the litigation that has bedevilled the suit land and stated that the actions of Kinyanjui and KAG church have been adjudged illegal and amount to intermeddling of a deceased estate by a Court of competent jurisdiction and that if the orders sought are granted they might dispose of the property and urged the Court to disallow it with costs.
10. Rev Samuel Njagi Charagu filed an affidavit sworn on the 3/2/25 in support of the application and reiterated the contents of the applicant's application. That contrary to the applicant's averments the church took possession of the land since 2007 to date. He stated that the church has connected piped water to the premises as well as employed guards to secure the said properties and that the church uses the suit land to fully run its programs throughout the week and not only on Sunday as alleged by the respondent.



## Determination

11. Having considered the application, the affidavit evidence the written submissions the key issues for determination are;
  - a. Whether a temporary injunction should be granted
  - b. Whether orders of status quo are merited
  - c. Whether an order should be issued under the doctrine of lis pendens and Section 106 of the [Land Registration Act](#) as prayed for
  - d. Costs of the application
12. The principles guiding the grant of interlocutory application are now well settled. Those principles were set out in *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358 set out as follows:
  - a. a prima facie case with a probability of success at the trial;
  - b. the applicant is likely to suffer an injury, which cannot be adequately compensated in damages;
  - c. if the Court is in doubt about the existence or otherwise of a prima facie case it should decide the application on a balance of convenience;
13. In determining an application for interlocutory injunction, it is trite that the Court is not to examine issues in finality as that is the preserve of the trial Court. This was the finding in the case of *Edwin Kamau Muriu Vs Barclays Bank of Kenya Ltd Nairobi HCCC No. 1118 of 2002*, where the Court held that:-

“In an Interlocutory application, the Court is not required to determine the very issues which will be canvassed at the trial with finality. All the Court is entitled at that stage is to determine whether the Applicant is entitled to an Injunction sought on the usual criteria.”
14. What then is a prima facie case? The first hurdle that an applicant must surmount is to establish a prima facie case with a probability of success. A prima-facie case was described in the case of *Mrao Ltd...Vs... First American Bank of Kenya Ltd & Others (2003)KLR*, to mean:-

“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”.
15. The court in granting or declining to grant an injunction is exercising its discretion which discretion must be exercised judiciously. This was the holding in the case of *Nyutu & Others Vs...Gatheru & Others (1990) KLR 554*, the Court held that:-

“Whether or not to grant an injunction is in the discretion of the Court and the discretion is a free one but must be judicially exercised”.
16. The applicant’s case is that they have acquired title to the suit land through adverse possession for which they have urged this court in their pleadings to grant. The respondents have argued that the claim of adverse is unfounded seeing that the respondents took possession of the suit land in 2020. It is common knowledge that KAG Church is in possession of the suit land.



17. The applicants have argued that the church is their tenant since 2007 but the respondent posits that the church occupied the suit land for purposes of parking since 2020 and that the threshold for adverse possession has not been met.
18. Obviously, this is a contentious and a core issue that this court has been urged to determine in the pleadings. It is not disputed that the respondent has been adjudged as the owner of the title and so far as the said judgment has not been set aside and or appealed against. As at now the rights of the applicants are yet to be determined and I hesitate to say no more lest I embarrass the court that will be hearing the matter.
19. It is trite that the party on whom the burden of proving prima facie case lies must show a clear and unmistakable right to be protected which is threatened by an act sought to be restrained. In this case, I find that the Applicants have not demonstrated a right that warrants this courts protection, hence no prima facie case established.
20. Having found that the applicant has not evinced a prima facie case, I find no necessity of determining the other two limbs.

**b. Whether an order of status quo should issue**

21. The Applicants sought an alternative order of status quo. Section 13(7) (a) of the *Environment and Land Court Act*, 2015 (2011) abundantly provides for this court’s mandate to grant interim preservation orders.
22. Practice Direction Number 32 of the Environment and Land Court Practice Directions, 2014 provides thus;
 

“During interpartes hearing of any interlocutory application, where appropriate, parties are encouraged to maintain status quo----- after considering the nature of the case or hearing both sides the judge shall exercise discretion to order for status quo pending the hearing and determination of the suit keeping in mind the overriding interests of justice.”
23. The term “status quo” has been defined by the Black’s Law Dictionary 10<sup>th</sup> Edition as; -
 

“The situation that currently exists.”
24. In the instant case, status quo means the Plaintiffs are using the suit properties for parking through their proxy, KAG Church, Uthiru a fact confirmed by the Defendant. Therefore, in preserving the suit property, the KAG Church shall continue using the suit properties for parking only and no other use pending the hearing and determination of the suit. I would also add that there shall be no dealings on the suit land pending the hearing and determination of the suit.

**b. Whether an order should be issued under the doctrine of lis pendens and Section 106 of the *Land Registration Act* as prayed for**

25. Black’s Law Dictionary, 9<sup>th</sup> edition defines ‘lis pendens’ as the jurisdictional power or control acquired by a court over property while a legal action is pending.
26. Ideally and under the common law doctrine of ‘lis pendens’, in land cases like this one, status quo should be maintained from the time a case is filed in court until its determination.



27. The Court of Appeal in the case of Ruth Kinyua –vs- Partick Thuita Gichure & Another (2015) eKLR cited with approval Turner L.J in *Bellany v Sabine* (1857) 1 De J 566 where he had held that:

“(lis pendens) is a doctrine common to the courts both of law and equity and rests as I apprehend, upon this jurisdiction, that it would plainly be impossible that any action or suit could be brought to a successful determination, if alienation pendent lite were permitted to prevail. The plaintiff would be liable in every case to be defeated, by the defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo subject again to defeat by the same course of proceedings.”

28. The doctrine of Lis pendens just like status quo orders are aimed at preserving the subject matter pending conclusion of litigation so that there is no impotent judgement in the end. See the case of *Bernadette Wangare Wangare Muriu –vs- NSSF Board of Trustees & 2 Others* (2012) eKLR when the court stated as follows;

“The necessity of the doctrine of lis pendens in the adjudication of land matters pending before the court cannot be gainsaid, particularly for its expediency as well as the orderly and efficacious disposal of justice.”

29. I hasten to state that though the Indian Transfer of Property Act (ITPA) was repealed the doctrine being of common law stature remains applicable in Kenya.

30. That said having granted status quo I find no necessity in allowing it as it more or less serves the same purposes.

31. Disposal orders;

a. The application succeeds to the extent that status quo is allowed. For avoidance of doubt, status quo means the Plaintiffs are using the suit properties through KAG Church for parking only and no other use pending the hearing and determination of the suit. In addition, there shall be no dealings on the suit title pending the hearing and determination of the suit.

a. Costs of the application are payable by the applicants.

b. Parties are directed to fix the suit for hearing expeditiously.

32. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

