



Nanjala (Suing on behalf of Joseph Onyango Ogallo) v Okada (Sued on behalf of John Oduku Balongo) (Environment & Land Case E012 of 2022) [2023] KEELC 16443 (KLR) (16 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16443 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E012 OF 2022**

**BN OLAO, J
MARCH 16, 2023**

BETWEEN

FELIX ONYANGO NANJALA (SUING ON BEHALF OF JOSEPH ONYANGO OGALO) APPLICANT

AND

ROSEMARY BARASA OKADA (SUED ON BEHALF OF JOHN ODUKU BALONGO) RESPONDENT

RULING

1. Felix Onyango Nanjala (the Applicant herein and suing on behalf of the Estate of Joseph Onyango Ogallo) has approached this Court vide his Notice of Motion dated October 12, 2022 in which he seeks the following orders as against Rosemary Barasa Okada (the Respondent herein and sued on behalf of John Oduku Balongo):
 - a. Spent
 - b. That pending the hearing and determination of this case, an inhibition be placed on the register of the Land Parcel No Bunyala/mudembi/1773 to preserve it.
 - c. That pending the hearing and determination of this suit the Respondent, family, agents or any other person claiming on her behalf be and is restrained from interfering with Applicant's use of the subject matter or trespassing or encroaching on the subject matter.
 - d. That in the alternative, the status quo, that the Applicants use of the subject matter be maintained pending the hearing and determination of this suit.
 - e. That costs be provided for.



The application which is premised on the provisions of Sections 1, 1A, 3, 3A of *Civil Procedure Act* and Section 68 of the *Land Registration Act* is supported by the Applicant's affidavit of even dates and is also founded on the grounds set out therein.

2. The basis of the application is that the Applicant and his family have since 1979 to date been in occupation of a portion of land measuring 3½ acres out of the Land Parcel No Bunyala/mudembi/1773 (the suit land) after Joseph Onyango Ogalo purchased it from John Oduki Balongo (both now deceased). That John Oduki Balongo unfortunately died before transferring the 3½ acres to Joseph Onyango Ogalo. However, the Applicant and his family have been in occupation and possession of the 3½ acres since 1979 and the Respondent and his family have never utilized it. The Respondent has recently commenced succession proceedings in respect of the Estate of John Oduki Balongo and intends to transfer the suit land to a 3rd party and also interfere with the Applicant's use of the 3½ acres.
3. The following documents are annexed to the application:
 1. Witness statements.
 2. Agreement for sale of land plot no 1773 measuring 3½ acres between John Oduki and Joseph Onyango dated April 29, 1979.
 3. Letter of consent to sub-divide Land Parcel No Bunyala/mudembi/1773 dated April 29, 1993.
 4. Application for consent to transfer Land Parcel No Bunyala/mudembi/1773 to Joseph Onyango Ogalo and Raphael M Wanyama.
4. When the application was placed before me on November 8, 2022, I did not certify it as urgent but I directed that it be canvassed by way of written submissions.
5. Though served with the application on January 12, 2023, the Respondent did not file any response.
6. On March 13, 2023, Ms Achala holding brief for Mr Omeri for the Respondent sought more time to file a response. That application was opposed by Mr Fwaya for the Applicant as there were no good reasons to extend time. The Court declined to extend time for the Respondent.
7. The application is therefore not opposed.
8. I have considered the application, un-opposed as it is. It is clear from the documents filed herein that the Applicant and his family have been in occupation and possession of a portion of land measuring 3½ acres out of the suit land since 1979. And although the Applicant has not invoked Order 40 of the *Civil Procedure Rules*, it is clear from the prayer no (C) that he seeks an order of temporary injunction as well.
9. As the party on the suit land, the Applicant and his family no doubt have an interest in the same which needs to be protected as we await the full trial. The orders of temporary injunction and inhibition are therefore well merited.
10. Section 68 (1) of the *Land Registration Act* provides that:
 68. (1)

“The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”



An order of inhibition is similar to an order of prohibitory injunction. It bars the registered owner of land from registering any dealings on the same until the suit is heard and determined or until further orders of the Court. Before issuing such an order, the Court must be satisfied that the Applicant has shown good grounds to warrant the grant of the same – *Dorcas Muthoni & 2 Others v Michael Ireri Ngari* 2016 eKLR.

11. In the circumstances of this case, I am persuaded, from the un-rebutted evidence of the Applicant that both the orders of inhibition and temporary injunction are well merited.
12. Accordingly, I allow the Notice of Motion dated October 12, 2022 in the following terms:
 1. An order of inhibition is hereby issued inhibiting the registration of any dealings including transfer or charge on the land parcel No Bunyala/mudembi/1773 pending the hearing and determination of this suit.
 2. An order of temporary injunction is hereby issued restraining the Respondent, his agents, family or any other person acting through him from interfering with the Plaintiff's occupation and possession of the 3½ acres of land comprised in the Land Parcel No Bunyala/mudembi/1773 until this case is heard and determined.
 3. The Applicant to ensure that this matter is heard and determined within 12 months from today in accordance with the provisions of Order 40 Rule 6 of the *Civil Procedure Rules* failure to which the order of temporary injunction shall lapse unless otherwise extended by the Court.
 4. No orders as to costs.

RULING DATED, SIGNED AND DELIVERED ON THIS 16TH DAY OF MARCH 2023 BY WAY OF ELECTRONIC MAIL.

BOAZ N. OLAO

JUDGE

