



**Onyango v Aloo & 3 others (Environment & Land Case
E036 of 2022) [2023] KEELC 17795 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17795 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E036 OF 2022**

**E ASATI, J
MAY 31, 2023**

BETWEEN

SILAS AMOLO ONYANGO PLAINTIFF

AND

JOHN ALOO 1ST DEFENDANT

KISUMU DISTRICT LAND REGISTRAR 2ND DEFENDANT

KISUMU DISTRICT LAND SURVEYOR 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. Silas Amolo Onyango is the Plaintiff in this suit. Together with the plaint he filed an application dated December 21, 2022 seeking for orders that: -
 - a. The honourable court be pleased to certify the application urgent, be heard ex parte and service of the same be dispensed with in the first instance.
 - b. The Honourable court be pleased to grant a temporary injunction restraining the defendants/ respondents, their agents, servants, employees and/or representatives from trespassing onto, erecting, sub-dividing and/or constructing illegal structures or alienating, demolishing, disposing of or otherwise interfering with the Plaintiff/Applicant's ownership, quiet and peaceful occupation, possession and/or enjoyment of the suit parcel of land KISUMU/ KONYA/2567 and/or KISUMU/KONYA/8007 which has now been re-surveyed or sub-divided and/or encroached respectively, pending hearing and determination of this application and/or suit herein.
 - c. The Defendants/Respondents and/or Representative be and/or hereby ordered to stop resurveying, sub-dividing, alienating, selling and/or disposing of the evicting any illegal



structures on or around the suit parcel of land Kisumu/Konya/2567 approximate area 0.9(Ha) and/or Kisumu/Konya/8007 which is now re-surveyed and/or sub-divided to Kisumu/Konya/8007 respectively and be stopped forthwith from interfering in any way, threatening the Plaintiff/Applicant with eviction, dispossession, demolition, disturbances and/or violence in any way and the order of this Honourable court be enforced with assistant of OCS, Kondele police station.

- d. A restricting order be granted against the Defendants/ Respondents, stopping and construction, sub-division, beaconing, selling or disposing of the suit parcel of land Kisumu/Konya/2567 and/or Kisumu/Konya/8007 respectively and shared amongst themselves until the determination of the application/suit herein.
 - e. An order that the sub-division without the consent or authority of the Plaintiff/Applicant thereto alienation. Selling, encroachment and putting up or building illegal structure thereto by the Defendants/Respondents is illegal, unlawful and void and that the Plaintiff/Applicant is hereby declared the rightful, legal occupant and/or owner of the suit parcel of land Kisumu/Konya/2567 and/or Kisumu/Konya/8007 respectively and further that the illegal structures or beacons thereto be removed forthwith.
 - f. A caveat and/or restriction do issue to the Registrar of Lands Kisumu Sub-county to stop any further sub-division, alienation and/or transfer of the suit parcel of land known as Kisumu/Konya/2567 and/or Kisumu/Konya/8007 respectively and shared amongst the Defendants/ Respondents until the hearing and determination of this application.
 - g. The Defendants/Applicants be ordered by the Honourable court to re-construct the original survey of Kisumu/Konya/2567 and Kisumu/Konya/8007 respectively.
 - h. The cost of this application be provided for.
2. The application which was stated to be brought pursuant to the provisions of Order 40 Rules 1, 2, 3 and 4 and Order 50 Rule 1 *Civil Procedure Rules* and sections 1A, 1B, 2, 3A and 63(e) of the *Civil Procedure Act* was based on the grounds that the applicant is the registered owner of land parcels known as Kisumu/Konya/2567 and Kisumu/Konya/8007. That the Defendants have colluded and secretly sub-divided the suit lands and shared the same among themselves but now the applicant has been quietly and peacefully enjoying the suit land but now the Defendants have blocked the applicant from peaceful enjoyment of the suit lands and are intending to dispose, sell, alienate, further sub-divide and permanently occupy the land.
 3. The application was supported by the averments in the applicant's Supporting Affidavit sworn on December 21, 2022.
 4. The application was opposed by the 1st Respondent vide the grounds contained in the Replying Affidavit sworn by the 1st Respondent on May 2, 2023. The 1st Respondent's case is that he has not interfered with the suit lands, that he is the registered owner of land parcel numbers Kisumu/Konya/9212 and 9213 which he bought. That it is actually the Plaintiff/applicant who subdivided land parcel number Kisumu/Konya/2567 so as to produce the resultant parcel numbers Kisumu/Konya/8005, 8006 and 8007 all registered in the name of the plaintiff. That there is absolutely no reason why the plaintiff initiated the proceedings and the application herein.
 5. The 2nd, 3rd and 4th Defendants did not respond to the application.
 6. By consent of the parties the application was canvassed by way of written submissions. Written submissions were filed on behalf of the applicant by the firm of Emmah Mawinda & co Advocates.



- Counsel submitted that the suit property is in danger of being alienated by the Respondents. That the applicant has demonstrated a prima facie case and all the grounds for grant of temporary injunction as the applicant has stated in the Supporting Affidavit how the Respondents have interfered with and deprived him of his rights in respect of the suit lands.
7. Written submissions were filed on behalf of the 1st Respondent by the firm of DOE Anyul & Co Advocates. Counsel submitted that from entry No 2 on title No KISUMU/KONYA/2567 it was clear that a restriction had been placed on the title because the registered owner was deceased. That the applicant has not exhibited any documents to show that letters of administration were obtained before the land was transferred to him. That it is apparent that the applicant is holding an illegal and invalid title. That the applicant has not demonstrated a prima facie case. That from the face of the pleadings, the dispute is a boundary dispute and the applicant has to demonstrate compliance with sections 18 and 19 of the Land Registration Act. That in the absence of such demonstration, the court lacks jurisdiction to entertain the suit.
 8. I have carefully considered the application, the reply thereto and the submissions made. Prayers 1 and 6 were sought to be granted pending the hearing and determination of the application. The same are spent. Prayers 3, 5 and 7 of the application seek for permanent orders. These can only be available after full hearing of the suit. Prayers 2 and 4 of the application seek for temporary injunction and restricting order restricting the Defendants' activities on and concerning the suit land. The principles for grant of temporary injunctions as settled in the case of *Giella -vs- Cassman Brown & Co Ltd [1973] EA 358* are that an applicant must firstly 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 and thirdly, if the court is in doubt, it will decide the application on a balance of convenience.
 9. To demonstrate a prima facie case the applicant needs to prove, as provided for in Order 40 Rule 1 of the Civil Procedure Rules 2010, that the suit land is likely to be wasted, damaged or alienated by the unlawful acts of the Respondents. The applicant's complaint in the application is that though he is the registered owner of the suit lands, the Respondents have colluded and subdivided the suit lands and shared the same among themselves thereby depriving him of his right to peaceful enjoyment of the suit lands. However, no evidence of the subdivision or sharing out of the suit lands by the Respondents was placed before the court. There were no annexures to the application whatsoever. The applicant further complained of unlawful activities on the suit land namely continuous resurvey, trespass, encroachment, erection of structures and subdivision by the Respondents. For these, too, there was no evidence displayed. The documents contained in the applicant's list of documents simply show that land parcel NO KISUMU/ KONYA/2567 belonged to him.
 10. On the other hand, the 1st Respondent annexed to his Replying Affidavit copies of register (green cards) in respect of land parcel numbers Kisumu/Konya/2567, 8005, 8006 and 8007. They show that land parcel No Kisumu/Konya/2567 measuring 0.9Ha belonged to the applicant who became registered owner on January 22, 1999. That the title in respect of land parcel Kisumu/Konya/ 2567 was closed on June 18, 2018 upon subdivision of the land to create new land parcels No Kisumu/ Konya/8005, 8006 and 8007. This means that land parcel No Kisumu/Konya/2567 no longer exists and thus cannot be the subject of orders of injunction. The green cards for the new land parcels show that all the new parcels of land were registered in the name of the plaintiff on June 18, 2018 and they remain so to date. No evidence was adduced to controvert this. It has not been demonstrated how the applicant will suffer irreparable injury from this.
 11. I find that the grounds for grant of the orders sought have not been demonstrated. The application lacks merit. The same is dismissed with costs to the 1st Defendant/Respondent.



It is so ordered.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 31ST DAY OF MAY 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.

Mawinda Advocate for the Plaintiff/Applicant.

Anyul Advocate for the 1st Respondent.

No appearance for the 2nd, 3rd & 4th Defendant.

