



REPUBLIC OF KENYA



KENYA LAW
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**Otula v Okombo (Environment & Land Case 21 of 2021)
[2023] KEELC 17585 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17585 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE 21 OF 2021
GMA ONGONDO, J
MAY 29, 2023
(FORMERLY MIGORI ELC MISC APP NO. 78 OF 2019)
IN THE MATTER OF THE CIVIL PROCEEDURE RULES 2010
IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION OF KENYA
IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION
PURSUANT TO SECTION 38 OF THE LIMITATIONS OF ACTIONS ACT**

BETWEEN

DAVID AKOKO OTULA PLAINTIFF

AND

JAMES NDEGE OKOMBO DEFENDANT

RULING

1. The instant ruling is in respect of an application by way of a notice of motion dated July 27, 2023 where the plaintiff/applicant formerly represented by Odhiambo Kanyangi and Company Advocates and currently by Ongoso Ayoma and Company Advocates is seeking the following orders;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. The honourable court be pleased to grant a temporary order of injunction restraining the respondent herein, their agents, servants, representatives, and assigns from the sub-division, disposal, excavation, fencing, building, and/or in anyway whatsoever interfering with land parcel No South Karachuonyo/Kamenya/723 until the hearing and determination of this suit.



- e. Costs of the application.
2. The application is premised upon grounds 1 to 14 stated on the face of the same and the applicant's affidavit annexed thereto. In summary, the applicant laments that the suit land reference number South Karachuonyo/Kamenya/723 registered in the name of the respondent with effect from May 13, 1994, was initially, registered in the name of the respondent's mother, Zilpa Orinda. That the applicant and his nuclear/extended family openly entered the suit land, continuously and peacefully possessed and occupied the same for about 62 years.
 3. Further, the applicant laments in part that the respondent's application dated December 16, 2021 was not responded to as the applicant's former counsel had forwarded the file to a liaison firm to deal and there was an oversight on the part of the latter. That the respondent is fencing the suit land with the ultimate gain of title thereof and there is tension and anguish within the locality of the suit land.
 4. In a replying affidavit sworn on September 14, 2022, the defendant/respondent opposed the application. He deposed, *inter alia*, that the applicant has failed to obey the status quo order issued in this matter and that, the application is devoid of merit.
 5. The applicant was heard by way of written submissions further to orders of November 16, 2022 herein.
 6. In the submissions dated February 25, 2023, learned counsel for the applicants referred to the orders sought in the application and cited order 42 rule 6 (2) of the Civil Procedure Rules, 2010, section 1A of the Civil Procedure Act chapter 21 Laws of Kenya and the case of Kenya Shell Ltd v Kibiru (1986) KLR 410, among other authorities, on stay of execution of decree.
 7. The respondent filed submissions dated February 14, 2023 and stated-

“.....The honourable court had issued an order to maintain status quo and the orders of temporary injunction to be granted is not any different from earlier orders.that the plaintiff's application dated July 27, 2022 lacks merit, had been overtaken by events and should be dismissed with costs. Moreover, the plaintiff has not complied with the court order issued on the November 16, 2022..”.
 8. I have duly considered the entire application, the response thereto and the parties' respective submissions. So, is the instant application meritorious?
 9. The principal order sought in the application is a temporary injunction against the respondent. This court is aware of order 40 of the Civil Procedure Rules, 2010 on temporary injunctions and interlocutory orders.
 10. The three pillars on which rests the foundation of any order of injunction, interlocutory or permanent are well settled; see Giella v Cassman Brown and Co Ltd (1973) EA 358 and Nguruman Ltd v Jan Bonde Nielsen and 2 others (2014) eKLR.
 11. Notably, this court has the mandate to grant interim preservation orders under section 13 (7) (a) of the Environment and Land Court Act, 2015 (2011)
 12. The status quo orders rendered by this court on February 4, 2020 in respect of the suit land, are still in place herein. They are meant to preserve the suit land, in the interim, pending the hearing and determination of this suit; see also Ogada v Mollin (2009) eKLR 620.
 13. In the circumstances, I find the temporary injunctive order sought in the application superfluous. The same is not merited.



14. In the result, this application is disallowed and the orders of February 4, 2020 are restated accordingly
15. Costs of the application be in the cause
16. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 29TH DAY OF MAY 2023.

G. M.A ONG'ONDO

JUDGE

Present

Defendant, present in person.

Court assistant, Mutiva.

