



Owidi (Suing as the legal representative of the Estate of Thadayo Mumbo Owidi -Deceased) v Ondenge (Environment & Land Case E005 of 2023) [2023] KEELC 18272 (KLR) (14 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18272 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE E005 OF 2023
GMA ONGONDO, J
JUNE 14, 2023

BETWEEN

PILISTA MUMBO OWIDI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THADAYO MUMBO OWIDI -DECEASED) APPLICANT

AND

DANIEL ODHIAMBO ONDENGGE RESPONDENT

RULING

1. This ruling is in regard to an application by way of a notice of motion dated March 29, 2023 and filed in court on March 31, 2023 by the respondent/applicant, Daniel Odhiambo Ondenge (the applicant herein) through the firm of Ochich TLO and Associates. The application is mounted pursuant to order 40 rules 1 and 2 of the [Civil Procedure Rules, 2010](#), seeking the orders *infra*;
 - a. Spent
 - b. Spent
 - c. The respondent (Pilista Mumbo Owidi) in her own capacity, her agents, employees and assigns be restrained from undertaking any activity, trespassing, tiling or grazing on the subject parcel namely Kabondo/Kodhoch West/351 pending the hearing and determination of the suit.
 - d. The area chief Kodhoch West Location and the OCS Kabondo to ensure compliance with the orders.
 - e. Costs of the application be provided for
2. The application is anchored upon grounds (i) to (iv) set out on the face of it and is further premised on the applicant's supporting affidavit of fourteen paragraphs sworn on even date and the annexed documents marked as "D001 to D008b" which include; a copy of title deed in respect of the suit land



- (D001), a copy of the sale agreement (D002), a copy of letter to registrar of lands- Rachuonyo sub-county (D003), a copy of map (D004), a copy of the search and photograph showing the homestead (D005), a photograph of the applicant grazing livestock (D006), a photograph of the resting place of the late Thadayo Mumbo Owidi (D007) and other photographs (D008a and D008b).
3. The applicant laments that he, Daniel Odhiambo Ondenge, is the bonafide owner of the suit land. That on or about March 20, 2023, the respondent, Pilista Mumbo Owidi, trespassed on the suit land, cut down indigenous trees, tilled the land and is likely to interfere with the applicant's peaceful ownership and occupation thereof. That further, the respondent has since claimed ownership of the suit land through the instant suit.
 4. In a replying affidavit sworn on May 30, 2023 and duly filed herein on June 7, 2023, the respondent, Pilista Mumbo Owidi, opposed the application. She averred that she has been in occupation of the suit land since 1994. That her late husband and son are buried thereon. That further, the applicant has never directed her to vacate the suit land, which she currently occupies and is utilizing. That the instant application is frivolous, misleading and has been brought in bad faith.
 5. The application was heard by way of written submissions further to this court's directions of April 17, 2023 as provided for under order 51 rule 16 of the [Civil Procedure Rules, 2010](#).
 6. By the submissions dated June 5, 2023 and lodged in court on even date, learned counsel submitted that the applicant had met the threshold for grant of an order of injunction as set out in the locus classicus case of *Giella v Cassman Brown and Co Ltd* [1973] EA 358. To buttress the submissions, counsel relied on various authorities including the case of [Nguruman Limited v Jan Bonde Neilsen & 2 others](#) CA No 77 of 2012 [2014] eKLR.
 7. The respondent's counsel filed submissions dated June 7, 2023 on even date and identified twin issues for determination thus: whether the court should grant the interim orders sought by the applicant and who bears costs. Counsel submitted that the respondent is in occupation of the suit land. That equity aids the vigilant and not the indolent and that the applicant was satisfied with the *status quo* until the respondent filed the instant suit. That the applicant has not satisfied the threshold set out in *Giella* case (supra) and urged the court to dismiss the instant application with costs.
 8. I have carefully considered the application, the respondent's replying affidavit and the rival submissions in their entirety. The principal issues for determination are:
 - a. Whether the applicant has met the threshold for grant of an injunction order
 - b. Who should bear the costs of this application?
 9. On the first issue as to whether an injunction should issue against the respondent, the principles of injunctions were enunciated in the case of *Giella v Cassman Brown* (supra) and as was reiterated in the case of *Nguruman Limited* (supra) where the Court of Appeal held that;

“In an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is In His favour.

These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”



10. So, has the applicant demonstrated a prima facie case with a likelihood of success and that unless the court grants the injunction order there is real danger he will suffer prejudice? From the submissions of counsel and perusal of the proceedings, it is my considered view that no real danger has been demonstrated to warrant the grant of the orders sought.
11. Besides, the instant application has only been filed after the respondent filed the main suit herein. Thus, the same is an afterthought.
12. Indeed, interlocutory injunctions are meant to preserve the substratum of the suit pending the hearing and determination of the suit. The grant of interlocutory injunctions is not meant to occasion prejudice to any party.
13. It is this court's considered view that the applicant has not put forward a satisfactory argument why the orders sought should be issued.
14. To that end, I find the application dated March 29, 2023 and filed in court on March 31, 2023 unmerited, the same is disallowed.
15. In order to preserve the suit land, an order of *status quo* in lieu of interim injunction is hereby granted in line with section 13 (7) (a) of the [Environment and Land Act, 2015](#) [2011], pending the hearing and determination of this suit.
16. Costs of the application to be in the cause.

DELIVERED, DATED AND SIGNED AT HOMA BAY THIS 14TH DAY OF JUNE 2023.

G M A ONGONDO

JUDGE

Present

- 1. Mr. Ochich, learned counsel for the respondent/applicant**
- 2. Okello and Mutiva, Court Assistants**

