



Okusimba (Suing as Legal Representative And Administrator Of The Estate Of The Late Morris Okusimba Nyangweso) v Owate & another; Registrar of Lands, Kakamega County (Interested Party) (Environment & Land Case E004 of 2023) [2023] KEELC 18186 (KLR) (13 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18186 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E004 OF 2023**

**DO OHUNGO, J
JUNE 13, 2023**

BETWEEN

**JANE CHEREDI OKUSIMBA APPLICANT
SUING AS LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE
ESTATE OF THE LATE MORRIS OKUSIMBA NYANGWESO**

AND

**YUNES AYUMA OWATE 1ST RESPONDENT
LILIAN FANICE OKUNYO 2ND RESPONDENT**

AND

REGISTRAR OF LANDS, KAKAMEGA COUNTY INTERESTED PARTY

RULING

1. The plaintiff/applicant moved the court through originating summons (OS) dated January 27, 2023, wherein she averred that the respondents obtained title to the parcel of land known as Shianda/Marama/1063 (the suit property) fraudulently. Together with the OS, she filed notice of motion dated January 27, 2023, which is the subject of this ruling. As drawn, prayers 1, 2 and 5 of the notice of motion are overtaken by events. Through prayers 3 and 4 of the application, the plaintiff seeks an order of inhibition to restrain registration of dealings on the suit property.
2. The application is supported by an affidavit sworn by the plaintiff. She deposed that she holds letters of administration ad litem in respect of the estate of Morris Okusimba Nyangweso (deceased) who was her husband. That her husband was the registered proprietor of the suit property which he had



- purchased from the first defendant/respondent. That the defendants fraudulently transferred the suit property to themselves with the assistance of the interested party and through forgery.
3. The defendants/respondents opposed the application through a replying affidavit sworn by the second defendant/respondent. She deposed that Owate Opondo who was her late father was the registered proprietor of the suit property and that Morris Okusimba Nyangweso fraudulently transferred the suit property to himself without obtaining any letters of administration in respect of the estate of Owate Opondo. She further stated that they acquired the suit property back by issuing a citation to the plaintiff in Butere citation cause number 51 of 2021 upon which they obtained an order allowing them to file succession proceedings in respect of the estate of Morris Okusimba Nyangweso. That they then obtained confirmed grant through which they regained ownership of the suit property after which they subdivided it into Shianda/Marama/1971 and Shianda/Marama/1972.
 4. The application was canvassed through written submissions. The plaintiff and the defendants filed submissions. The interested party neither filed a response nor submissions. I have considered the application, the affidavits, and the submissions.
 5. As noted earlier, prayers 2 and 5 of the application, through which the plaintiff sought injunction pending hearing and determination of the notice of motion, are overtaken by events.
 6. Regarding prayer 4 of the application, I note that it refers to restraining access, fencing, utilization, cultivation, and farming of the suit property. All those are beyond the scope of an order of inhibition as provided under section 68 of the [Land Registration Act](#). An order of inhibition operates only within the register by barring the registration of other dealings, but only upon registration of the inhibition. An inhibition is not the same thing as an injunction.
 7. Among documents placed on record by the defendants are copies of certificates of search in respect of the parcels of land known as Shianda/Marama/1971 and Shianda/Marama/1972. The searches show that the two parcels are subdivisions of the suit property and that the defendants were registered as proprietors of both parcels on November 14, 2022.
 8. The parties herein are trading allegations of fraudulent acquisition of the suit property. Although the defendants claim that the application is overtaken by events since the suit property no longer exists following its subdivision, I note that the defendants remain the registered proprietors of the new subdivisions known as Shianda/Marama/1971 and Shianda/Marama/1972.
 9. An application such as the present one is impacted by paragraph 32 of Practice Directions on Proceedings in The Environment and Land Courts, and on Proceedings Relating to The Environment and The Use and Occupation Of, And Title to Land and Proceedings in other courts (gazette notice No 5178 of 2014) which provides:

During the *inter-partes* hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, 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 bearing in mind the overriding interests of justice..
 10. I am persuaded that there is need to preserve the suit property and its specified subdivisions through an order of inhibition, in terms of paragraph 32 of Practice Directions on Proceedings in The Environment and Land Courts, and on Proceedings Relating to The Environment and The Use and Occupation Of, And Title to Land and Proceedings in other courts (gazette notice No 5178 of 2014) as read with section 68 of the [Land Registration Act](#), pending hearing and determination of the suit.



11. Consequently, I make the following orders:

- a. Pending hearing and determination of this suit, an order of inhibition is hereby issued in respect of the parcels of land known as Shianda/Marama/1063, Shianda/Marama/1971 and Shianda/Marama/1972.
- b. Costs shall be in the cause.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 13TH DAY OF JUNE 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Ogonji for the plaintiff/applicant

Mr Minishi holding brief for Mr Obwatinya for the defendants/respondents

No appearance for the interested party

Court Assistant: E. Juma

