



Aringo & 2 others v Odeke & 2 others (Environment & Land Case E031 of 2024) [2025] KEELC 1359 (KLR) (18 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1359 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E031 OF 2024**

**BN OLAO, J
MARCH 18, 2025**

BETWEEN

**BENSON KILANDE ARINGO 1ST PLAINTIFF
DAVID ARINGO 2ND PLAINTIFF
CLEOPHAS NAMENGE 3RD PLAINTIFF**

AND

**CHRISTOPHER ODEKE 1ST DEFENDANT
THE LAND REGISTRAR, BUSIA COUNTY 2ND DEFENDANT
THE COUNTY SURVEYOR, BUSIA COUNTY 3RD DEFENDANT**

RULING

1. Benson Kilande Aringo, David Aringo And Cleophas Namenge (the 1st to 3rd Applicants respectively) have, by their Notice of Motion dated 7th November 2024 filed under Order 40 of the Civil Procedure Rules as well as Sections 1A, 1 and 63 (e) of the Civil Procedure Act sought the following orders against Christopher Odeke, The Land Registrar and the County Surveyor Busia (the 1st, 2nd and 3rd Respondents respectively) with respect to the land parcel No Bukhayo/Lupida/679 (the suit land):
 - a. Spent
 - b. Spent
 - c. That a permanent order of injunction be issued restraining the 1st Respondent either by himself, his agent, family, servants and/or assigns from in any way interfering with or trespassing on the land parcel No Bukhayo/Lupida/679 measuring 18.5 acres pending the hearing of the main suit.



- d. That this Honourable Court be pleased to direct or order the 3rd respondent to visit the land parcel No Bukhayo/Lupida/679 and establish the correct boundaries between the Applicants and the 1st respondent as per the certificate of Confirmation of Grant issued on 16th September 2021.
2. The Motion is the subject of this ruling and is anchored on the grounds set out therein and supported by the 1st Applicant's affidavit of even date.
3. The gravamen of the Motion is that the 1st Applicant's deceased father one Wikilifu Aringo was the registered proprietor of the land parcel No Bukhayo/Lupida/679 (the suit land herein) but that the 1st Respondent, as a purchaser, moved to the Succession Court and filed Succession Cause No 215 of 2018. The suit land measuring 18.5 acres has been distributed as follows:

1st respondent - 2.0 acres

1st Applicant , 2nd Applicant and 3rd Applicant - 16.5 acres jointly

However, the 1st Respondent has caused the suit land to be registered under the name "Christopher Odeke & 3 Others" under Sections 61 and 62 of the Land Registration Act without defining his portion/acreage prompting the 1st Respondent to utilize more acreage than what is his rightful portion. It is therefore in the interest of justice that the 1st Respondent be restrained by way of an injunction.

4. The following documents are annexed to the Motion:
 1. Copy of the Certificate of Confirmed Grant issued to the 1st Respondent on 16th September 2021 with respect to the suit land in Busia Chief Magistrates Court Succession Cause No 215 of 2018.
 2. Copy of Grant of Letters of Administration intestate issued to the 1st Respondent on 8th August 2018 in Succession cause NO 215 of 2018.
 3. Application for Official Search for the land parcel No Bukhayo/Lupida/679.
 4. Copy of a letter dated 6th April 2023 addressed to the 2nd Respondent by the counsel for the plaintiffs.
 5. The 1st respondent filed a replying affidavit dated 17th January 2025 in which he deposed, inter alia, that he resides and works on the suit land of which he became a co-owner to a portion limited to 2.0 acres following a transmission after due succession process and he cannot therefore be enjoined therefrom. That the Applicants are well aware of the process which led to the registration of the 2.0 acres of land and which was registered following the succession process. He therefore cannot be enjoined from his own land.
 6. That the Applicants' application to revoke the Grant issued to him was dismissed and no appeal has been filed to-date. That the Applicants declined to voluntarily sign the requisite statutory forms and so the Court allowed the Executive Officer to execute such forms on his behalf. That on 24th November 2023, the Applicants filed another application to revoke the grant but the said application was dismissed. That his interest in the suit land is limited to 2.0 acres and the Court should allow the demarcation of the suit land to determine the boundary which the Applicants are not sure of. That this suit is an abuse of the process of this Court in view of the provisions of Sections 18 and 19 of the Land Registration Act. The Motion should therefore be dismissed with costs.



7. The following documents are annexed to the replying affidavit:
 1. Copy of the Order issued on 5th February 2018 in Busia Chief Magistrate's Court Misc Citation No 8 of 2016.
 2. Copy of Grant of Letters of Administration Intestate issued in Busia Chief Magistrates Court Succession Cause No 215 of 2018.
 3. Copy of ruling delivered on 19th February 2020 in Busia Chief Magistrate's Succession Cause No 215 of 2018.
 4. Copy of confirmed Grant issued on 16th September 2018 in Busia Chief Magistrates Court Succession Cause No 215 of 2018.
 5. Copy of order issued on 9th June 2021 in Busia Chief Magistrates Succession Cause No 215 of 2018.
 6. Copy of ruling delivered on a date which is not very legible in Busia Chief Magistrates Court Succession Cause No 215 of 2018.
 7. Copy of order issued on 6th July 2022 in Busia Chief Magistrates Court Succession Cause No 215 of 2018.
 8. Copy of Application for Partition of land parcel No Bukhayo/Lupida/679.
 9. Copy of a letter dated 21st November 2023 addressed to the parties herein through the Chief informing them of the County Surveyor's visit to partition the land parcel No Bukhayo/Lupida/679 on 7th December 2023 as per the Court order.
8. The application has been canvassed by way of written submissions. These have been filed by Mr Omboto instructed by the firm of Rioba Omboto & Company Advocates for the Applicants and by MR SHIHEMI instructed by the firm of Maloba & Company Advocates for the 1st Respondent.
9. I have considered the Notice of Motion, the rival affidavits and annextures thereto and the submissions by counsel.
10. Although prayer NO (c) of the Motion is wrongly worded to read "permanent injunction" pending the hearing of the suit, what the Applicants meant was an order of temporary injunction pending hearing and determination of the suit. The other prayer NO (d) seeks an order directing the 3rd Respondent to establish the boundaries between the Applicants' and the 1st Respondents' land as per the Certificate of Confirmed Grant. I do not think prayer NO (d) is available to the Applicants at this stage unless of course with the parties consent. This is because, that is one of the remedies which the Applicants seek in the main suit and which is still pending. To grant that order at this stage will amount to granting a final remedy before hearing the parties evidence. That prayer must be declined although, as will soon become clear, that is really of no consequences.
11. The prayer for temporary order of injunction pending trial has to be considered in line with the well-trodden path set out in the case of *Giella -v- Casman Brown & Company LTD 1973 E.A 358*. That means, the Applicants have to establish the following:
 1. A prima facie case with a probability of success;
 2. Such an injunction will normally not be granted unless the Applicant might otherwise suffer irreparable loss or injury which cannot adequately be compensated by an award of damages;



3. If in doubt, the Court will decide the application on the balance of convenience.

A prima facie case, as was held in the case of Mrao Ltd -v- First American Bank Of Kenya Ltd 2003 KLR 125.

“... is a case in which on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

In their plaint filed simultaneously with the Motion subject of this ruling, the Applicants seek the following substantive remedies:

1. An order of permanent injunction restraining the 1st Respondent either by himself, his servants, family agents or assigns from interfering or trespassing on the land parcel No Bukhayo/Lupida/678 measuring 18.5 acres.
2. An order that the Land Registrar and Land Surveyor Busia County demarcate the land parcel No Bukhayo/Lupida/679 and/or establish the correct acreage and boundaries between the Applicants and Respondents herein and present a report to this Court.

The basis of their claim is as I have already set out earlier in this ruling.

12. It is clear from both the Applicants' plaint and the Motion that whereas the Succession Court in Succession Cause NO 215 of 2018 confirmed the Grant with respect to the Estate of the deceased and distributed the suit land as already indicated above, the portions of land have not yet been demarcated on the ground which means that the boundaries have yet to be established. That being the case, this Court cannot be in a position to determine what portion of the suit land belongs to the Applicants and which portion belongs to the 1st Respondent other than the fact, already established by the Succession Court, that the 1st Respondent is entitled to 2.0 acres and the other Respondents to 16.5 acres jointly. In the circumstances, until the respective titles are issued and the portions surveyed, this Court cannot be in a position to issue any injunctive reliefs with respect to any portions of the suit land prohibiting any trespass when the boundaries are yet to be determined. That therefore means that the Applicants have not summoned the first hurdle of showing a prima facie case to warrant the order of temporary injunction or, indeed, even a permanent injunction after a full trial. Such an order would be in vain.
13. Having not established a prima facie case, it is clear that the Motion collapses and there is no need to consider the other two limbs which are irreparable loss or injury which cannot be compensated by an award of damages and, if in doubt, the balance of convenience. This is because, as was held in the case of Nguruman Ltd -v- Jan Bonde Nielsen & Others C.a. Civil Appeal No 77 of 2012;

“If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”

The result is that the Motion must fail.

14. This Court must however go further and decide whether I actually have the jurisdiction to determine the dispute herein. I have already set out above the main remedies which the Applicants seek in their plaint one of which is to direct the Land Registrar and County Surveyor Busia to demarcate the suit land and “establish the correct acreage and boundaries”. The acreage of the suit land which is available to the Applicants and the 1st Respondent has already been determined by the Succession Court in Succession Cause NO 215 of 2018. No appeal appears to have been filed challenging the Grant. This



Court has no jurisdiction to reverse that distribution of the Estate of the deceased as already decreed by the Succession Court.

15. Most importantly however, it is clear that the Applicants also seek this Court to establish the “boundaries” between the parties herein. That jurisdiction, as rightly submitted by counsel for the 1st Respondent, is the preserve of the Land Registrar. Section 18(2) of the [Land Registration Act](#) provides that:

“The Court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”

There are other provisions in the same Section which stipulate the role of the Land Registrar in determining boundaries.

16. It follows that this Court has no jurisdiction to determine the dispute in this case and which is the foundation on which the Notice of Motion dated 7th November 2024 is premised. This suit is therefore for striking out and with it, the Notice of Motion dated 7th November 2024.
17. The up-shot of all the above is that this Court makes the following orders:
1. The Plaintiff’s suit is struck out for want of jurisdiction.
 2. Costs to the 1st Defendant.

BOAZ N. OLAO

JUDGE

18TH MARCH 2025

RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 18TH DAY OF MARCH 2025.

BOAZ N. OLAO

JUDGE

18TH MARCH 2025

