



REPUBLIC OF KENYA



**KENYA LAW**  
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**Onyancha v Iminza (Administrator of the Estate of the Late  
Elijah Moshi) & another (Environment & Land Case 39 of 2020)  
[2023] KEELC 20242 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20242 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 39 OF 2020  
EO OBAGA, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**JOSEPH MANGARE ONYANCHA ..... PLAINTIFF**

**AND**

**BENETTA IMINZA (ADMINISTRATOR OF THE ESTATE OF THE LATE  
ELIJAH MOSHI) ..... 1<sup>ST</sup> DEFENDANT**

**JOSPHAT MUGO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion dated June 12, 2023 in which the Plaintiff/Applicant seeks the following orders:-
  1. Spent
  2. This honourable court be pleased to grant a stay in implementation of the court order dated March 22, 2023 by Uasin Gishu County surveyors pending the hearing and determination of this application.
  3. This honourable court be pleased to order by way of temporary injunction, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their agents, servants and any other person claiming under them be restrained from encroaching upon, fencing, trespassing or developing or from any other way the parcel of land known as UG/Illula Settlement Scheme/2413 pending the hearing and determination of this application;
  4. That the private surveyors report be implemented and the same be deemed to be the proper survey.



5. That one Jimlax Juma Odhiambo be enjoined as a party to this suit for purposes of this application.
6. The costs of this application be provided for.
2. The Applicant had filed an originating summons in which he sought for orders that he had obtained  $\frac{1}{4}$  of an acre of land comprised in title No Uasin Gishu/Illula Settlement Scheme/2413 by way of adverse possession. The case proceeded by way of formal proof and judgment was delivered in favour of the Applicant on October 27, 2022.
3. As per the decree, the County Surveyor and the Land Registrar moved to the ground to implement the decree. The Applicant now contends that the County surveyor implemented the decree in a biased manner and that if the position is let to stand, he will lose his permanent structures on the land.
4. The Applicant contends that he purchased the suit property on the basis of what it was on the ground and that he has fenced his portion. He states that he commissioned a private surveyor who prepared a report which he now wants implemented.
5. The application was not opposed as neither the 1<sup>st</sup> Defendant nor the intended party filed a replying affidavit in opposition to the same. I have carefully considered the Applicant's application. In its judgment, the court was categorical that the Applicant was entitled to  $\frac{1}{4}$  of an acre which was described in the sale agreement. The land was sold subject to a survey being carried out and  $\frac{1}{4}$  of an acre curved out for him.
6. From the application, the Applicant seems to be of the view that he is entitled to the entire land which he has fenced. The court in its judgement was clear that he had only acquired  $\frac{1}{4}$  of an acre which was described in the sale agreement. Though the Applicant had specifically pleaded that the Land Registrar give him land as fenced on the ground, this is not what the court granted him. The court granted him what he had purchased because it is what had been described in the agreement.
7. The court gave a clear judgement that it was the County Surveyor in conjunction with the Land Registrar who were to implement the court decree. The court did not direct a private surveyor to implement the decree. To accede to the Applicants' request for implementation of the private surveyor's report will be tantamount to changing the judgement through an application. I therefore find that the Applicant's application is devoid of merit. The same is dismissed with no orders as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**E. O. OBAGA**

**JUDGE**

