



Gogo (Suing as the administrator of the Estate of the Late Charles Goto Awiti aka Gogo Awiti) v Amanga (Suing as the administrator of the Estate of the Late John Omolo Amanga) & 3 others (Land Case E005 of 2025) [2025] KEELC 1265 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1265 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
LAND CASE E005 OF 2025
E ASATI, J
MARCH 13, 2025

BETWEEN

FREDRICK AWILI GOGO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE CHARLES GOTO AWITI AKA GOGO AWITI) PLAINTIFF

AND

SAMWEL OKELO AMANGA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE JOHN OMOLO AMANGA) 1ST DEFENDANT

SAMWEL OKELO AMANDA 2ND DEFENDANT

CHARLES ODEYO JAOKO 3RD DEFENDANT

THE KISUMU COUNTY LAND REGISTRAR 4TH DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion application dated 23rd January, 2025 brought by the Plaintiff/Applicant pursuant to the provisions of Section 63(e) of the *Civil Procedure Act* Order 40 Rules 1 and 2 of the Civil Procedure Rules 2010. The application seeks for orders of;
 - a. temporary injunction restraining the Respondents, their employees, agents, servants and/or whomever jointly and severally from entering onto, evicting the Applicant, transferring, charging and/or in any other way whatsoever dealing and/or interfering with the Applicant's possession and use of the original land parcel number Kisumu/Dago/674 and its resultant subdivision being parcels Kisumu/Dago/3509 to 3526 pending the hearing and determination of the suit.
 - b. Costs of the application be provided for.



2. The application was supported by the contents of the Supporting Affidavit sworn by Fredrick Awili Gogo on 23rd January, 2025.
3. The application was opposed vide the ground of opposition dated 17th February, 2024 that;the court lacks the jurisdiction to hear and determine the application,the application is misconceived bad in law and an abuse of the process of the court,the application is frivolous and trivial in nature and should be dismissed with costs,the application does not meet the mandatory requirement for granting the orders sought,the application is incurably and fatally defective hence should be dismissed with costs and thatthe orders sought are vague.
4. I have considered the application. The substantive prayer sought is for an order of temporary injunction.
5. The circumstances under which an order of temporary injunction may be granted are set out in Order 40 Rule 1 and as held in the case of Giella -vs- Cassman Brown t he Applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience.
6. In the present case, the grounds upon which the application is brought are that at all material times, the deceased applicant was jointly registered alongside one Achola Abayo (deceased) as joint first registered owners of the original land parcel No.Kisumu/Dago/674 at the conclusion of the land adjudication process in 1973. That both registered owners passed on.
7. That the 1st Respondent without conducting succession unlawfully transferred the suit land to his name and later to the 2nd Respondent who in turn transferred it to the 3rd Respondent. That the 3rd Respondent undertook sub-division of the land to produce parcel number Kisumu/Dago/ 3509 to 3526.
8. That the estate of the deceased Applicant learnt of these developments recently. That the Applicant and the estate of the deceased stood to suffer irreparable harm if the injunction is not granted.
9. A copy of the green card attached to the application shows that the register in respect of the suit land parcel No. Kisumu/Dago/674 was opened on 23rd October, 1973 on which date the land was registered in the name of Achola Abayo and Gogo Awiti (minor) and Kathorina Adero (guardian). The green card shows that on 4th April, 1975the land was transferred and registered in the name of John Omollo Amanga. According to the Applicant, this was wrongful as succession to the estate(s) of the registered owners had not been undertaken. However, from the dates in the death certificates exhibited it is clear that the transfer of the land to the name of John Omollo Amanga happened before the registered owners died. The date of death of Achola Abayo was given by the Applicant as 2nd August, 1987 and for Charles Gogo Awiti alias Gogo Awiti as 8th October, 1989. In the circumstances, the need for succession did not arise.
10. Further, the original title parcel number Kisumu/Dago/674 registered in the name of the deceased persons no longer exists. The green card shows that the title was closed on 28th March, 2013 upon sub-division and issuance of new numbers. An order of injunction to preserve the land under the said title parcel number will therefore be futile.
11. It is also evident from the green card that upon sub-division of the original number, new parcels were created ranging from numbers 3509 to 3526. The owners of these parcels have not been made parties in the suit or even been disclosed. Any order issued by the court in respect of the said parcels will no doubt affect them. And this will be in contravention of their constitutional right to be heard.



12. I find that the grounds for grant of an order of temporary injunction have not been demonstrated.
The application lacks merit and is hereby dismissed.
Costs to the 1st, 2nd and 3rd Respondents.
Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 13TH DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Akinyi for the Plaintiff/Applicant.

No appearance for Respondents.

