



Okemwa (Suing as the legal representative of the Estate of Okemwa Mokuwa Orange (Deceased) v Nyakundi & 4 others (Environment & Land Case E003 of 2023) [2023] KEELC 21081 (KLR) (25 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21081 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE E003 OF 2023**

**M SILA, J
OCTOBER 25, 2023**

BETWEEN

SIKO OKEMWA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF OKEMWA MOKUA ORENGE (DECEASED)) PLAINTIFF

AND

**KENYA NYAKUNDI 1ST DEFENDANT
YUNES MORAA KENYA 2ND DEFENDANT
TERESA BWARI KENYA 3RD DEFENDANT
ABISIBA NYAMBEKI KENYA 4TH DEFENDANT
LAND REGISTRAR, KISII 5TH DEFENDANT**

RULING

1. What is before me is an application dated 23 May 2023 and filed on 30 May 2023 by the 1st to 4th defendants. They seek orders of injunction to restrain the plaintiff from interfering with their possession and enjoyment of the land that is the subject of this dispute pending hearing and determination of the plaintiff's case. The application is opposed.
2. To put matters into perspective, the plaintiff/respondent commenced this suit through a plaint filed on 31 March 2023. The plaintiff avers to be suing as the legal representative of the estate of Okemwa Mokuwa Orange (hereinafter simply referred to as 'the deceased') who died in the year 1994. It is his pleading that the deceased owned the land parcel South Mugirango/Botabori/109 and that he left it in care of the 1st defendant in 1958 when he left for Tanzania. It is pleaded that when the deceased came back, he found the 1st defendant already registered as proprietor. Upon this discovery, the deceased filed a suit in the High Court at Kisii, being Kisii HCCC No. 67 of 1994 inter alia seeking orders that the



- 1st defendant was registered as proprietor in trust for him. He also put a restriction pending hearing of his case. It is averred that after his death, the restriction was removed and the land subdivided by the 5th defendant (Land Registrar, Kisii) into the land parcels No. 1364, 1365, 1366 and 1367. It is the contention of the respondent that the titles of the 2nd to 4th defendants are fraudulent. In the suit, the respondent seeks orders for a declaration that the subdivision of the land parcel No. 1091 into the land parcels No. 1364- 1367 was illegal, an order cancelling the titles No. 1364 – 1367 and a new title deed be issued to him, an order to compel the 1st – 4th defendants to demolish their structures on the land parcels No. 1364 – 1367, costs and interest.
3. The applicants filed a joint statement of defence. The applicants pleaded that the suit Kisii HCCC No. 67 of 1994 abated. They pleaded that this suit is also time barred. They otherwise denied all other averments and put the respondent to strict proof.
 4. The supporting affidavit to the subject application is sworn by the 1st defendant. He has deposed that the 2nd, 3rd and 4th defendants are his wives though the 2nd and 4th defendants are deceased and they ought not to have been sued. He has deposed that the respondent chases them away whenever they attempt to enter the suit properties and that he has started grazing his animals on the suit land. He avers that they stand to suffer irreparable loss unless the respondent is restrained from further interfering with their quiet possession.
 5. The respondent filed a replying affidavit to oppose the motion. In it, he deposed inter alia that all his family members and clan have been living on the suit land since colonial times and that some of his family are buried on the land. He deposed that on 27 February 2023, the applicant hired his son who burned their houses and took possession illegally and was charged in Ogembo Law Courts with a criminal offence. He reiterates that they are the ones entitled to the land.
 6. I invited both counsel to file written submissions which they did and I have taken the same into account.
 7. I have disparate contentions of fact which I am incapable of reconciling at this stage of the proceedings. Whereas the applicants claim that the respondent has entered their land, chases them away and is grazing his animals on it, the respondent contends also to be in possession and that a house of his relative, who is on the land, was burned. I think it would have helped if the parties had come to court with a report from the Land Registrar, a surveyor, or valuer, indicating exactly what is on the land and how the land is being used. Without such report, I cannot know what is on the land and whether one party has just recently moved into the land.
 8. Doing the best that I can, I will order that the status quo prevailing before this suit was filed be maintained until this case is heard and determined. No person should construct any new structure on the land or interfere with the already existing structures on the land. The use of the land should be as it was before this case was filed. If any party contravenes this position, the other is at liberty to cite them for contempt. That is the order that I am inclined to make given the rather shallow material presented by both parties. The costs of this application will be costs in the cause.
 9. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 25 DAY OF OCTOBER 2023.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

