



**Okondo v Irario & 3 others (Environment & Land Case 212 of 2014)
[2023] KEELC 20938 (KLR) (24 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20938 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 212 OF 2014
BN OLAO, J
OCTOBER 24, 2023**

BETWEEN

JOHN MARK OKONDO PLAINTIFF

AND

MARGARET ITYANG IRARIO 1ST DEFENDANT

LAWRENCE ODHIAMBO MUGENI 2ND DEFENDANT

LAND REGISTRAR, BUSIA COUNTY 3RD DEFENDANT

HON ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. The dispute involving the ownership of the land parcel No South Teso/angoromo/2168 (the suit land) between John Mark Okondo (the plaintiff) and Margaret Ityang Irario, Lawrence Ojiambo Mugeni, The Land Registrar and The Attorney General (the 1st, 2nd, 3rd and 4th defendants respectively) was heard and determined by Omollo J.
2. In a judgment delivered on March 13, 2023, the judge made the following disposal orders in favour of the Plaintiff:
 - a. An order of permanent injunction be and is hereby issued restraining the Defendants or any of them by themselves, their servants, employees and/or agents from dispossessing the Plaintiff of the suit property, entering into, occupying, evicting the Plaintiff's agents, employees and/or servants, constructing, fencing, selling, leasing, disposing any interest of and/or undertaking any development or in any other way interfering with the property and/or the Plaintiff's quiet possession and enjoyment of the entire suit property known as land reference number South Teso/angoromo/2168.



- b. A declaration that the 2nd Defendant's purported title to the land parcel number South Teso/angoromo/2168 is illegal and a nullity and does not confer any proprietary interest upon the 2nd Defendant.
 - c. A declaration that the Plaintiff is the bonafide owner of the entire parcel of land known as land reference number South Teso/angoromo/2168.
 - d. An order is hereby issued directing the Land Registrar to forthwith rectify its register and to nullify the 2nd defendant's registration in respect to that entire parcel known as land reference number South Teso/angoromo/2168.
 - e. Costs of the suit and the counter-claim plus interest awarded to the plaintiff.
3. Aggrieved by that judgment, the 2nd defendant lodged a notice of appeal on August 22, 2023. It is not known if any appeal was subsequently filed.
 4. A decree was subsequently extracted by the plaintiff.
 5. I now have before me for my determination the Plaintiff's Notice of Motion dated July 10, 2023 by which the Plaintiff, citing the provisions of sections 1, 1A, 1B, 3, 3A and 63(e) of the [Civil Procedure Rules](#), seeks the following orders:
 1. That this Honourable Court do issue an order mandating the Officer Commanding [OCS] Busia Police Station to provide Security herein during the eviction exercise pursuant to this Court's judgment and decree.
 2. That costs of this application be provided for.
 6. The application is supported by the Plaintiff's affidavit of even date and the grounds set out therein.
 7. The gist of the application is that judgment was entered for the Plaintiff against the 1st and 2nd Defendants for orders of permanent injunction and eviction from the suit land. However, the said 1st and 2nd Defendants have refused to comply with the said judgment and decree and have persisted in their illegal possession and occupation of the suit land where they have put up a garage from where they continue to generate income. This has caused the Plaintiff prejudice and financial loss yet he has a judgment in his favour.
 8. Though served with the application on 11th August 2023 and which came up for hearing on 12th October 2023, neither the 1st nor 2nd Defendants attended Court. For record purposes, Mr Makokha counsel for the 2nd Defendant, though served, did attend Court. Instead, Mr Athong'a acting for the 2nd Defendant addressed the Court virtually and stated that he had been instructed by the 2nd Defendant and had filed an application which he wanted to be canvassed first. He asked the Court to place the file aside and stay the Plaintiff's Notice of Motion pending the hearing of his application.
 9. Mr Ashioya counsel for the Plaintiff informed the Court that there was no application filed by the 2nd Defendant yet the application had been served on the 6th October 2023 some five (5) days earlier. Further, Mr Athong'a was infact not even on record and the application was not opposed as neither of the Defendants had filed any responses and the Court also learnt that the 1st Defendant was infact deceased.
 10. This Court therefore declined the invitation to place the file aside and proceeded to direct that the ruling would be delivered by way of electronic mail on 24th October 2023.
 11. I have considered the application, un-opposed as it is.



12. Notwithstanding the fact that the application is not opposed, it is clear to me that the same is for dismissal for the simple reason that what is sought is not part of what the Court decreed in its judgment herein. At the commencement of this ruling, I have set out the remedy which this Court granted the Plaintiff. At no point did the Court make any orders of eviction of the 1st and 2nd Defendants from the suit land as is clear from the judgment delivered on 13th March 2023 and the subsequent decree. It is not therefore correct for the Plaintiff to aver, as he has done in paragraph 3 of his supporting affidavit, as follows:

“ 3. That subsequent to the said judgment, a decree was issued on the 3.65.2023 (sic) for permanent injunction and eviction of the 1st and 2nd Defendants from L.R No South Teso/angoromo/2168. I annex a copy of the same and mark it JMO2.” Emphasis mine.

13. In the absence of any orders for the eviction of the 1st and 2nd Defendants from the suit land, it would be improper for this Court to issue an order for the Police to provide security for that exercise. To do so would amount to importing into this Court’s judgment and the subsequent decree an order which was not part of the said judgment and decree. The Plaintiff must pursue another route.

14. The up-shot of all the above is that the notice of motion dated 10th July 2023 is dismissed with no orders as to costs.

RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 24TH DAY OF OCTOBER 2023.

BOAZ N. OLAO

JUDGE

