



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**ENVIRONMENT & LAND CASE NO.342OF 2014**

**EVERLYN ONGARO.....1ST PLAINTIFF**

**MARGARET AUDI ONGARO.....2ND PLAINTIFF**

**(SUING AS THE PERSONAL REPRESENTATIVES AND ADMINISTRATIVES  
OF THE ESTATE OF HENRY GORO AKUN ALIAS GORO AKUN - DECEASED)**

**VERSUS**

**ENOCK OMONDI .....1ST DEFENDANT**

**STEPHEN OMOLLO AKUN.....2ND DEFENDANT**

**RULING**

1. The two plaintiffs herein – **EVERLYN AKINYI ONGARO** and **MARGARET AUDI ONGARO** – filed this suit against the two defendants – **ENOCK OMONDI AKUN** and **STEPHEN OMOLLO AKUN** – on 15/12/2014. Later on – 22/1/2015 to be specific – they filed an application seeking temporary injunctive redress against the defendants. This is a ruling on that application.
2. The legal tussle concerns land parcel No. **NORTH SAKWA/NYAWITA/351**, which the plaintiffs own as beneficiaries, and which the defendants are said to have entered into and started using. The plaintiffs want the defendants restrained from such entry and/or use.
3. The defendants on the other hand say they have done no such thing. They own, they said, parcel No. **NORTH SAKWA/NYAWITA/4936**. That is the land they are using and that is where they have constructed the structures alleged by the plaintiffs to be on their land.
4. The defendants denied being hostile or violent to the plaintiff and averred that it is infact the plaintiffs who have been exhibiting hostility. The plaintiffs were also faulted for filing the suit without a grant of letters of administration. They were said not to have **LOCUS STANDI**.
5. But that was not all. The plaintiffs application is said to fall short of the threshold for granting temporary injunctive orders as articulated in the case of **GIELLA VS CASSMAN BROWN & Co LTD: (1973) EA 358**.
6. Oral arguments were not proffered; submissions were filed instead. According to plaintiffs, the defendants have been expanding their land since 2011. By so doing, they have encroached on their land. This made the plaintiffs complain to District Land Registrar, Bondo, who visited the Land. It was confirmed that the boundaries had been interfered with.
7. The plaintiffs said they have met the threshold set in Giella's case (supra) and averred further that the court is enjoined to grant injunctive orders to prevent the ends of justice from being defeated as held in the case of **BONDE VS STEYN & OTHERS, {2013} EA page 8 -38**.

8. The defendants on the other hand reiterated that the plaintiff have no Locus standi, having failed to file the case together with a grant of letters of administration. The decided cases of **BETH WANTIRU VS SAVINGS & LOAN LTD: HCC No.629/05, NAIROBI**, and **PETER KARANJA MWANGI VS JOSEPH KAMANDE & Another: HCC NO.146/08, NYERI** were offered to illustrate the point.
9. It was submitted too that the court lacks jurisdiction, this matter being a boundary dispute which by law falls in the domain of Lands Office to handle.
10. The defendants went on to assert that the plaintiffs have not demonstrated a prima facie case nor convinced the court that they will suffer irreparable injury or loss. And the balance of convince was also said not to lie in their favour as the suit does not disclose a reasonable cause of action. The decided case of **KIRIGIA VS MAGAMBO: HCC No.62/04, MERU**, was cited as a guide.
11. It seems to me that the issues arising have much to do with Locus standi, jurisdiction, and attainment of the threshold set in Geella's case (supra).
12. On locus stand, it was the defendants position that the plaintiff filed the case without letters of administration.

I have mentioned the decided cases availed to show the legal position. I have read the cases. In all of them parties filed the suit without first obtaining letters of administration. The orders sought were declined not because the grant was not filed together with the suit but because it had not been obtained.

13. It seems to me to be the position of the defendants that the fact that the grant was not filed with the suit is fatal to the application. With respect, that is not the law. It is clear to me that the plaintiff filed the grant later. And it is clear that the grant was obtained before the suit was filed. The suit was filed on 15/12/2014. The grant was made on 25/2/2010. On this issue the defendants are wrong. They have mis-interpreted the law.
14. Then there was the issue of jurisdiction. According to the defendants, the dispute is about boundary and the applicable law enjoins that the Land's office handle the matter. Well, that is the law where the issue is solely one of boundary. But is that the position here?
15. A look at the plaintiffs case as filed shows well that the plaintiffs are complaining about trespass, occupation and forcible use. Quite clearly, the suit is not solely a boundary matter.

It is more than that. It is the defendants themselves who have chosen to treat it as a boundary issue and, believing in what they have asserted, proceeded to raise the issue of jurisdiction. On this too, the defendants are dead wrong.

16. Lastly, it is the defendants position that the plaintiffs case fail to meet the requisite threshold set in Geella's case. The plaintiffs have shown that the suit land is under them. They have the grant. They don't want that land interfered with. They would like to preserve it until the case is determined. They are not seeking orders concerning the defendants land. Their position is sound in law. And their concern about possible irreparable loss is also plausible because if interference is allowed to go on, there is no telling how far it can go.
17. All considered, it is necessary to allow the application. Accordingly, I make a finding that the application herein has merit. I hereby allow it.

**HON. J. A.K. KANIARU**

**ENVIRONMENT & LAND – JUDGE**

**30/6/2015**

30/6/2015

A.K. Kaniaru J.

N.O.Oyugi court clerk

Interpretation: English/Kiswahili

Anyul for plaintiffs

Odongo for defendants

Court: Ruling on application filed on 22/1/2015 read and delivered in open court. Right of appeal 30 days.

**HON. J. A.K. KANIARU**

**ENVIRONMENT & LAND – JUDGE**

**30/6/2015**