



**Bhogal v Bhogal (Environment & Land Case E014 of 2023)
[2025] KEELC 3219 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3219 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E014 OF 2023**

A OMBWAYO, J

APRIL 8, 2025

BETWEEN

PARAMJIT SINGH BHOGAL APPLICANT

AND

HARBINDER SINGH BHOGAL RESPONDENT

RULING

1. Paramjit Singh Bhogal (hereinafter referred to as applicant) has come to this court seeking an order of injunction against Harbinder Singh Bhogal (hereinafter referred to the respondent). He seeks orders of injunction prohibiting the respondent from accessing the property pending the hearing and determination of the suit. Moreover, he seeks an order for the restoration of the subject property to the status quo dated 18th December 2024. Lastly an order to issue for a joint or independent valuation of the property. The application is based on grounds that the Applicant sought and obtained orders of status quo before Justice L. A Omollo dated 11 April, 2024 in the present matter, and which were granted with a view to expediting the hearing of the suit which is now under gross breach by the Respondent.
2. According to the applicant, the conduct of the Respondent, points at a disobedient party, willing to scale all heights in violation of the Court Order provided on 18th December, 2024 and 25 February, 2025, in a process initiated by him and to take advantage of a bad situation to alter the property radically.
3. The Applicants property has been illegally invaded, subdivided, partitioned and trespassed on to by the Respondent without a Grant of Probate and therefore without any legal authority and the Respondent has continued to prevent the Applicant with unfettered access to the property despite the Court Orders provided on 18th December, 2024 and 25 February, 2025 and the Respondent continues to solely benefit from the using the Applicants property by way of cultivating and selling crops while the orders of the status quo remains in full force and effect.



4. The Respondent has been in extensive development and control of the subject property without any legal authority and is therefore a trespasser.
5. The orders sought to be granted by the honorable Court will assist with safeguarding and preserving the subject matter which is being dissipated by the Respondent and his agents to destroy the substratum of the suit herein. The Respondent's conduct has directly and adversely affected the Applicant and its associated third parties as the Respondent through connivance has sustained the defiance of the Courts Order.
6. The Respondent has enjoyed unfettered ownership and developed the suit property before the present invasion and illegal occupation and has done so without any legal authority and more importantly without the Applicant's consent. The property be locked and secured, and that no person or entity shall be permitted to enter until the case has been fully heard and a final determination issued.
7. The Applicant continues to suffer irreparable damage/loss, the orders sought in the present Application are not granted as there is an on-going invasion by the Respondent and strangers on the suit property in respect of which the Applicant has invested his sweat and livelihood, to purchase, develop and maintain the suit land which will, in the absence of stay, be depleted and squandered, even dissipated.
9. In the absence of stay to protect the subject matter, and despite status quo orders being issued herein, and which continue to be violated by the Respondent, it will be merely academic as damages cannot compensate for the damage that is on-going.
10. The Applicant has a good case worthy of the orders sought with high chances of success before this Honorable Court that will be rendered academic if the orders so sought are not granted. The Applicant prays for an order injunction pending the hearing and determination of the application herein and pending the inter-parties hearing of the substantive suit.
11. In the supporting affidavit which I have considered, the applicant reiterates the grounds thus that the Applicant sought and obtained orders of status quo in the present matter on 11th April, 2024 by Justice L A Omollo, and which were granted with a view to expediting the subject property herein, this is now under gross breach by the Respondent through illegal subdivisions of the suit property, as admitted by his own counsel, Ms. Mucheru, before Court on 25th February, 2025 coupled with his admission under oath, where they conceded closing the main gate and demanded the Applicant access to the property be vide a new gate to be built.
12. According to the applicant, the Respondent has been in extensive development and control of the subject property without any legal authority and is therefore a trespasser. The orders sought to be granted by the Honorable Court will safeguard and preserve the subject matter which is being dissipated by the Respondent and his agents to destroy the subs tratum of the suit herein. The Respondent has enjoyed unfettered ownership and extensively developed the suit property before the present invasion, and illegal occupation and has done so without any legal authority and more importantly without the Applicant's consent. Pending the hearing and determination of this application this Honorable Court does order the Lands Registrar, Nakuru, to impose a caution on the property to preserve the subject matter of this suit herein from transfers and ongoing disposals. The Applicant continues to suffer irreparable damage/loss, the orders sought in the present Application are not granted as there is an on-going invasion by the Respondents and strangers on the suit property in respect of which the Applicant has invested his sweat and livelihood, to purchase, develop and maintain the suit land which will, in the absence of stay, be depleted and squandered, even dissipated. In the absence of stay to protect the subject matters and despite status quo orders being issued herein,



- and which continue to be violated by the Respondent, it will be merely academic as damages cannot compensate for the damage that is ongoing.
13. The Respondent herein has continued to interfere with the Applicants peaceful enjoyment of parcel of land and has since gone ahead and planted illegal beacons thereon and even severally before, despite the pendency of this suit court and orders of status quo.
 14. In the replying affidavit the respondent states that the Applicant has not offered to do anything in furtherance of the orders of 10th December 2024 and instead of appealing against the same or moving the court to review the same, he is merely asking the Court to ignore its own Orders and stop their implementation. This is un-procedural and illogical.
 15. It was pursuant to Order number 2 above that he proceeded to engage and pay a surveyor who surveyed the property and installed beacons in accordance with the Court Order and Installed beacons along the midway.
 16. The plan of equal apportionment clearly shows that the portioning is not disproportionate as alleged by the Applicant; The Applicant's allegation is a baseless allegation unsupported by a survey or facts. The buildings erected by his late father are being safeguarded on his side and the Applicant has been adequately compensated with land on his side as calculated by the surveyor.
 17. He requested for- quotation from a contractor, to erect a fence demarcating the two portions in accordance with the survey plan and plan of equal apportionment and proceeded to undertake the job himself as it would be cheaper than outsourcing. The entrance gate, recently replaced by his late father falls on his side of the property. Plaintiff is at liberty to construct separate gate for his portion.
 18. I have considered the application in totality and the responses thereto and the rival submissions and the fact that the suit is coming for hearing on the 28th July, 2025, the parties should spend more time in preparation for the hearing of the suit. The court directed that the parties engage an independent surveyor to apportion the suit property between the two parties pending the hearing of the case. It appears that the parties have not agreed on an independent surveyor agreed between them to apportion the property. The respondent appears to be acting without involving the applicant. The respondent is implementing a court order without obeying the directions of the court in the said order.
 19. I do find the respondents acts of surveying the property without involving the applicant bordering on contempt of court. I do reiterate that the parties do engage a joint surveyor to apportion the property to the parties. Acts done by the surveyor not appointed by the parties jointly are a nullity as they fly in the face of a court order. There be liberty to apply for contempt in case of breach of the court order. Costs in the cause.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2025-04-08 12:56:06

