



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ondigo ((Suing as the Chairman, Committee Member And Co-Coordinator Of Kanyamony Clan Affected Land Property Owners On Their Own Behalf And Behalf Of Members Of Kanyamony Affected Land And Property Owners) v Kisumu & 2 others (Environment and Land Case Civil Suit 35 of 2019) [2022] KEELC 3580 (KLR) (13 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3580 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ENVIRONMENT AND LAND CASE CIVIL SUIT 35 OF 2019**

**A OMBWAYO, J**

**MAY 13, 2022**

**BETWEEN**

**AUGUSTINE GENGA ONDIGO ..... PLAINTIFF**

**(SUING AS THE CHAIRMAN, COMMITTEE MEMBER AND CO-COORDINATOR OF KANYAMONY CLAN AFFECTED LAND PROPERTY OWNERS ON THEIR OWN BEHALF AND BEHALF OF MEMBERS OF KANYAMONY AFFECTED LAND AND PROPERTY OWNERS**

**AND**

**DISTRICT LAND REGISTRAR KISUMU ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**PROVINCIAL LAND SURVEYOR ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff seeks a temporary order of injunction do issue restraining the respondents either by himself, his servants and or agents or anyone whomsoever claiming title, deriving authority or acting on their behalf from entering, selling, encroaching, interfering in any manner (especially with the existing boundary line between Kanyakwa rand Kogony sub location Kisumu/Kogony C18 Scheme)

Kisumu/Kogony/5145

Kisumu/Kogony/5101

Kisumu/Kogony/6063

Kisumu/Kogony/5874



Kisumu/Kogony/58

Kisumu/Kogony/5107

Kisumu/Kogony/5104

Kisumu/Kogony/5103

Kisumu/Kogony/5846

Kisumu/Kogony/7436

Kisumu/Kogony/6723

Kisumu/Kogony/5105

Kisumu/Kogony/5095

Kisumu/Kogony/6012

Kisumu/Kogony/6011

Kisumu/Kogony/5967, until this suit is heard and determined.

2. Moreover, that the court do issue an order compelling the respondents to immediately, as more provided for under section 19 of the *land Registration Act*, cause to be defined by survey, the precise position of the boundaries in respect of the applicant's suit property known and situated within Kisumu/Kogony C18 scheme.

Kisumu/Kogony/5145

Kisumu/Kogony/5101

Kisumu/Kogony/6063

Kisumu/Kogony/5874

Kisumu/Kogony/58

Kisumu/Kogony/5107

Kisumu/Kogony/5104

Kisumu/Kogony/5103

Kisumu/Kogony/5846

Kisumu/Kogony/7436

Kisumu/Kogony/6723

Kisumu/Kogony/5105

Kisumu/Kogony/5095

Kisumu/Kogony/6012

Kisumu/Kogony/6011

Kisumu/Kogony/5967

3. Furthermore, that the respondents to file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the said parcels and that this honourable court do issue an order compelling the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents to immediately cause boundary features to be fixed to demarcate the



applicant's suit property known within Kanyamony and Komoloclans especially land parcel situated in Kisumu/Kogony C18 scheme. That the honourable court does conduct a site visit on the suit parcel for a just determination of the suit. The cost of this application be provided for.

The grounds of the application are that:

- a. The plaintiff/applicants are the registered proprietors or the parcels of land the respondents intend to acquire.
  - b. If the illegality is allowed to flourish sanctity of titles will be questioned.
  - c. The 2<sup>nd</sup> defendant in liaison with the 1<sup>st</sup> defendant are in the brink of redrawing the boundary within sheet 18 bordering Kogony and Kanyakwar thus creating new land parcel to the detriment of the plaintiffs bonafide titles
  - d. It is in the interest of justice that orders sought herein are granted.
4. The respondents have not responded to the application. I have considered the application and do find that the only order merited to be granted is a temporary order of injunction restraining the respondents either by himself, his servants and or agents or anyone whomsoever claiming title, deriving authority or acting on their behalf from entering, selling, encroaching, interfering in any manner (especially with the existing boundary line between Kanyakwar and Kogony sub location Kisumu/KogonyC18 Scheme)
- Kisumu/Kogony/5145  
Kisumu/Kogony/5101  
Kisumu/Kogony/6063  
Kisumu/Kogony/5874  
Kisumu/Kogony/58  
Kisumu/Kogony/5107  
Kisumu/Kogony/5104  
Kisumu/Kogony/5103  
Kisumu/Kogony/5846  
Kisumu/Kogony/7436  
Kisumu/Kogony/6723  
Kisumu/Kogony/5105  
Kisumu/Kogony/5095  
Kisumu/Kogony/6012  
Kisumu/Kogony/6011  
Kisumu/Kogony/5967, until this suit is heard and determined.
5. The upshot of the above is that I do grant that order thus a temporary order of injunction do issue restraining the respondents either by himself, his servants and or agents or anyone whomsoever claiming title, deriving authority or acting on their behalf from entering, selling, encroaching, interfering in any manner (especially with the existing boundary line between Kanyakwar and Kogony sub location Kisumu/KogonyC18 Scheme)
- Kisumu/Kogony/5145



Kisumu/Kogony/5101  
Kisumu/Kogony/6063  
Kisumu/Kogony/5874  
Kisumu/Kogony/58  
Kisumu/Kogony/5107  
Kisumu/Kogony/5104  
Kisumu/Kogony/5103  
Kisumu/Kogony/5846  
Kisumu/Kogony/7436  
Kisumu/Kogony/6723  
Kisumu/Kogony/5105  
Kisumu/Kogony/5095  
Kisumu/Kogony/6012  
Kisumu/Kogony/6011  
Kisumu/Kogony/5967, until this suit is heard and determined.

I do decline to grant the rest. Costs in the cause.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 13<sup>TH</sup> DAY OF MAY, 2022**

**ANTONY OMBWAYO**

**JUDGE**

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.

