



REPUBLIC OF KENYA



**KENYA LAW**  
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**Obongo v Onyango (Environment & Land Case 38 of 2021)  
[2022] KEELC 18 (KLR) (10 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 18 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT & LAND CASE 38 OF 2021  
GMA ONGONDO, J  
MAY 10, 2022**

**BETWEEN**

**GEORGE HAZARIAH OBONGO ..... PLAINTIFF**

**AND**

**BENJAMIN OLIECH ONYANGO ..... DEFENDANT**

**RULING**

1. By a Notice of Motion dated 26<sup>th</sup> May 2020 and duly filed in court on 27<sup>th</sup> May 2020 under section 63 (c) of the *Civil Procedure Act* Chapter 21 Laws of Kenya, among other provisions of the law (the application), the plaintiff/applicant, Dr George Hazariah Obongo through the firm of G.S Okoth and Company Advocates, is seeking the following orders;
  - a. Spent
  - b. Spent
  - c. The Honourable court thereafter be pleased to issue an order of temporary prohibitory injunction to restrain the defendant, his next-of-kin, servants, workers, employees or agents from pulling down, destroying, and obstructing entry into the suit land (infra) pending the hearing and determination of this suit.
  - d. The costs of this application be costs in the cause.
2. The application is founded on the applicant's supporting affidavit of seven paragraphs of even date and a copy of his affidavit in support of an originating summons of even date and marked as "GO1" annexed thereto. The application is also based on grounds (a) to (f) which include; that the damage to the applicant's permanent commercial buildings on the suit land reference number Karachuonyo/ Konyango/1532, shall cause substantial loss to the applicant.



3. In a nutshell, the applicant's complaint is that on 22<sup>nd</sup> May 2020, the respondent and his employees or workers entered the suit land and destroyed permanent toilets erected behind his permanent buildings on the same land. That the respondent dumped more building materials into the said buildings hence, wholly blocked the applicant's entry into the buildings thereon. That the actions of the respondent are geared towards defeating the course of justice.
4. The respondent, Benjamin Oliech Onyango through the firm of Mimba and Company Advocates, opposed the application by way of a replying affidavit of eighteen (18) paragraphs sworn on 7<sup>th</sup> December 2021 and duly filed in court on 15<sup>th</sup> December 2021. In summary, he deposed, inter alia, that the application is misconceived, lacks any merit, is based on falsehood and a waste of the court's time and has no chance of success.
5. The respondent further deposed that the applicant filed similar suits previously. That the same were dismissed. That the buildings are intact and the applicant does not deserve the orders sought in the application.
6. On 27<sup>th</sup> May 2020, this court ordered and directed that the application be heard by way of written submissions; see Orders 51 Rule 16 of [Civil Procedure Rules, 2010](#).
7. Accordingly, learned counsel for the applicant filed submissions dated 10<sup>th</sup> June 2020 and urged the court to grant the orders sought in the application. Counsel referred to Order 40 Rule 1 (a) of the CPR, 2010, Principles of Injunction by Richard Kuloba pages 3, paragraph 1.2.2, Section 63 (c) of the [Civil Procedure Act](#) (Cap 21). Section 28 of the [Land Registration Act, 2016](#) (2012) and the case of [Pius Kipchirchir Kugo v Frank Kimeli Tenai](#)[2018] eKLR.
8. The respondent's counsel filed submissions dated 7<sup>th</sup> December 2021 and termed the application an abuse of the court process and that it has not met the threshold in *Giella Case* (infra). That the applicant has not come to court with clean hands and reiterated the assertion in the respondent's replying affidavit whereby the application is opposed.
9. I have duly considered the application, the replying affidavit and the parties' respective submissions in their entirety. So, has the application met the threshold for the grant of the orders sought therein?
10. Temporary injunctions and interlocutory orders are governed by Order 40 of the [Civil Procedure Rules, 2010](#). In cases where any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, temporary injunction and interlocutory preservation orders would be necessary.
11. The applicant's contention is that he is in occupation of the suit land since the year 1993. That on 22<sup>nd</sup> may 2020, the defendant entered the suit land and destroyed permanent toilets thereon. However, the respondent's contention is otherwise and a denial of the applicant's claim.
12. The triple requirements in an interlocutory injunction are well settled; see *Giella v Cassman Brown Company Ltd* [1973] EA 358 and case of *Nguruman Ltd v Jan Bonde Nielsen* [2014] eKLR, among other authoritative pronouncements.
13. I also proceed to subscribe to the decision in the case of [Hutchings Biemer Limited v Barclays Bank of Kenya Limited and 2 others](#) [2006]eKLR cited the case of *Madhupaper International Limited v Kerr* [1985] KLR 840 that the court has the jurisdiction to grant injunction application in respect of a deserving matter before it. A temporary injunctive relief is meant to preserve the status quo during the period the matter is in court pending the hearing and final disposal of it.



14. Section 13 (7) (a) of the *Environment and Land Court Act*, 2015 [2011] mandates this court to grant interim preservation orders. Interlocutory injunction and status quo orders are included thereunder.
15. It is trite that status quo order targets at the preservation of the property in dispute until the suit is determined or terminated, See *Ogada v Mollin* [2009] KLR 620
16. The applicant has satisfied this court that he is entitled to status quo order in lieu of the temporary injunction sought in the application. The end product is to preserve the suit land pending the hearing and determination of the suit. I find the application meritorious.
17. Wherefore, the application dated 26<sup>th</sup> May 2020 is determined thus;
  - a. The applicant and respondent to maintain the obtaining status quo over the suit land and the respondent shall not sell, lease, charge, transfer, further sub-divide or further erect permanent structures thereon pending the hearing and determination of the present suit.
  - b. Costs of the application be in the cause.
18. It is so ordered.

**DATED, DELIVERED AND SIGNED AT HOMA BAY THIS 10TH DAY OF MAY 2022.**

**G. M .A ONG'ONDO**

**JUDGE**

**Present;**

Ms. Opar holding brief for learned counsel, Mr. G.S Okoth for Plaintiff.

Plaintiff and defendant, absent

Okello, Court Assistant.

**G. M .A ONG'ONDO**

**JUDGE**

