



Orega alias Grison Oloo v Otieno (Sued as the Legal Representative of Administratrix of the Estate of Ogolo Ondome alias Samson Ogollo) (Environment & Land Case E002 of 2024) [2025] KEELC 3349 (KLR) (4 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3349 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE E002 OF 2024**

FO NYAGAKA, J

APRIL 4, 2025

BETWEEN

WASHINGTON OLOO OREGA ALIAS GRISON OLOO PLAINTIFF

AND

MILKA OTIENO (SUED AS THE LEGAL REPRESENTATIVE OF ADMINISTRATRIX OF THE ESTATE OF OGOLO ONDOME ALIAS SAMSON OGOLLO) DEFENDANT

RULING

Brief Facts

1. The Applicant filed the instant application dated 12th November, 2024 seeking the following orders:
 1. Spent.
 2. Spent.
 3. Spent.
 4. Spent.
 5. The Honourable court be pleased to grant an order of temporary injunction restraining the Defendant/Respondent herein either by herself agents, servants, employees and/or anyone claiming under the Defendant/Respondent from trespassing onto, entering onto, encroaching upon, selling and/or disposing of, charging, leasing, evicting, ploughing, cultivating threatening to forcibly enter upon, fencing and/or in any other manner dealing with the suit property that is L.R No. West Kasipul/Konyango Kokal/990 and/or any persons thereof and/or otherwise interfering with the Plaintiff's/Applicant's exclusive occupation, possession and use of the suit property pending the hearing and determination of this suit.



6. The Honourable court be pleased to grant an inhibition directed to and/or against any dealings, transaction and/or disposition relating and/or concerning transactions in respect of LR NO West Kasipul/Konyango Kokal/990 to last pending the hearing and determination of the instant suit.
 7. In the alternative and without prejudice to the foregoing, the Honourable court be pleased to order and direct the maintenance of status quo in respect of LR NO West Kasipul/Konyango Kokal/990 and more particularly barring and/or prohibiting the Defendant/Respondent from trespassing onto, entering onto, encroaching upon, selling and/or disposing of, charging, leasing, evicting, ploughing, cultivating threatening to forcibly enter upon, fencing and/or in any other manner dealing with the suit property that is L.R No. West Kasipul/Konyango Kokal/990 and/or any persons thereof and/or otherwise interfering with the Plaintiff's/Applicant's exclusive occupation, possession and use of the suit property pending the hearing and determination of this suit.
 8. Costs of the Application be borne by the Defendant/Respondent.
 9. Such further and/or other orders be made as the court may deem fit and expedient.
2. The Application was based on grounds set out and supported by the Affidavit of Washington Oloo Orega Alias Grison Oloo the Applicant herein sworn on 12th November, 2024. He stated that L.R No. West Kasipul/Konyango Kokal/990 the suit property herein was registered in the name of Ogolo Ondome Alias Samson Ogolo Ondome (Deceased) on 9th April, 1975. He further stated that he was the registered owner of L.R No. West Kasipul/Konyango Kokal/989 having acquired the same on 9th April, 1975 after completion of the adjudication process. He went on to state that together with his family they have been in occupation of the suit property and he has since constructed his home.
 3. The Applicant added that they have been in occupation until 1988 when a dispute arose between his family and the Respondent's family over occupation of the property. That together with her deceased mother, they were sued by Samson Ogolo (deceased) in Kisii HCC NO. 41 OF 1988 and that they were issued with an eviction and injunction orders from interfering with the suit property. He stated that the Respondent never executed the decree within the stipulated timelines of 12 years. He added that together with his family, they have been in peaceful quiet possession since 2001 for a period of 23 years. He stated that the Respondent's rights to and/or interest over the suit land lapsed by effluxion of time thus no rights over the suit property.
 4. Further, he had a prima facie case with high chances of success and since he has been on the suit land for a period of 23 years, the balance of convenience tilts in his favour and towards preservation and conservation of the suit land. He added that the Respondent was bound to continue with the threats, trespass and/or interference unless restrained by this court's order. He stated that he stood to suffer irreparable loss if the orders sought are not granted since the Respondent threatened to evict him from the suit property. He urged the court to allow the application as prayed.

Response

5. The Respondent filed her Replying Affidavit sworn 30th January, 2025 by which apart from rebutting the facts as deposed to by the plaintiff added one most important deposition, that status quo over the suit property be maintained. Thus, this Court needs not bother to reproduce the content of the deposition she made. It also needs not to take much time to analyze whether the Plaintiff has a prima facie case with a probability of success or whether substantial loss would be incurred by him or what the balance of convenience would be. In my view the prayer from the Respondent for status quo to be



maintained indirectly 'agrees' with the Plaintiff's position on the first two conditions and only leaves the third one for consideration along the 'proposed consent' of maintenance of status quo. Having given my opinion on the above I now summarized the submissions by the parties, as a matter of course and move straight to the determination of the application.

Submissions

6. Counsel for the Applicant filed his submissions dated 17th January, 2025 where he identified three issues for determination. The first was whether the Plaintiff/Applicant has a prima facie case with a probability of success. He submits in the affirmative and relied on the case of Mrao Ltd V First American Bank of Kenya Ltd & 2 Others. He submits that the Applicant demonstrated through evidence that the suit is bound to succeed against the Respondent. The second issue was whether the Plaintiff/Applicant shall suffer irreparable loss. He relied on the case of Nguruman Limited V Jan Bonde Nielsen & 2 Others [2014] eKLR and submits that the threat of interference has already been carried out by the Respondent through the damaging of the boundary affixed on the disputed portion for purposes of dispossessing the and/or evicting the Applicant from the suit land. The final issue was whether the balance of convenience is in favour of the Plaintiff/Applicant in the event the court is in doubt. He submits that if the court is in doubt, the balance of convenience tilts in favour of the Applicant as the evidence confirmed that the Applicant was ordered to evict the Applicant and his late mother from the suit land.
7. In conclusion, he submits that the Applicant met the requirements for grant of a temporary injunction. He also submits that there was need to preserve the suit property pending the hearing and determination of the suit.

Analysis and Determination

8. This court has considered the application and is of the view that the main issue for determination is whether the Applicant had met the threshold for grant of a temporary injunction. The Applicant contended that he had been in peaceful occupation of the suit land L.R No. West Kasipul/Konyango Kokal/990 for 23 years and that the Respondent has since interfered with the suit land by damaging the boundary of the disputed portion. He further argued that the balance of convenience titles towards preservation of the suit property.
9. The Respondent, on the other hand, prayed that the status quo of the suit property be maintained. It is not in dispute that the suit land is registered in the name of Ongolo Ondome (Deceased) and that the Applicant is in occupation. It is also not in dispute that the Respondent is the administrator of the deceased's estate. What then is the status quo and how would that comport with the order of injunction sought?
10. This Court has first to define the term or phrase status quo. Bryan A. Garner, in The Black's Law Dictionary, 11th Edition, Thompson Reuters, St. Paul MN. defines status quo as a Latin word which means 'the situation as it exists'. The purpose of an order to that effect is to preserve the subject matter for the eventual determination of the suit, claim or petition so much so that none of the parties' rights shall be prejudiced during the pendency of the suit, petition or claim. It therefore is important to clearly understand and articulate the fact in existence at the time of issuing the order of status quo. This clarification informs the basis for this Court defining the status quo in this matter as it will do in the prayers to be granted below, in a distinct manner or departing from the one that the Applicant defined it to be because that of the applicant was a subtle way of praying for injunction whichever way one looks at it.



11. In Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR, Odunga J. (as he then was) stated: -

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”

12. In the case of Charter House Investment Ltd V Simon K. Sang & 3 others [2010] KECA 56 (KLR) the court held as follows:

“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the Court requires protection and maintenance of the status quo. The award of a temporary injunction by Courts of equity has never been regarded as a matter of right, even where irreparable injury is likely to result to the applicant. It is a matter of sound Judicial discretion, in the exercise of which the Court balances the conveniences of the parties and the possible injuries to them and to third parties...”

13. It is noteworthy that the Respondent in her Replying Affidavit sought for status quo order which the Applicant under paragraph 23 of his supporting affidavit also sought for. It is this court’s view that in as much as the Appellant has prayed for two other orders of inhibition and temporary injunction, this court shall focus on the prayers mutually sought by both parties. It is this court’s view that in the circumstance, it is prudent to grant orders that both parties have sought and have no permanent implication on the suit land at this interlocutory stage of the case. It is my opinion that the other two prayers inhibition and injunction remains consumed by the status quo order as mutually agreed and thus cannot issue.

14. Consequently, orders of status quo orders is hereby granted pending hearing and determination of the suit.

15. The upshot of the foregoing is that the application dated 12th November, 2024 partially succeeds in terms of prayers (6) and (7) only as modified below and even then prayer 7 is granted in accordance with Order 40 Rule 6 of the Civil Procedure Rules, 2010. Thus, there be and is hereby issued,

1. An order of inhibition directed to and/or against any dealings, transactions and/or dispositions relating to and/or concerning land parcel No. LR NO West Kasipul/Konyango Kokal/990 to last pending the hearing and determination of the instant suit.
2. An order of status quo in respect of LR NO West Kasipul/Konyango Kokal/990 and more particularly that the party(ies) in occupation and use of the land remain on and continue to use or utilize the land by carrying out activities that do not deface the same or change its nature and character. Specifically, the party(ies) in occupation to remain on and use only the portions they currently use by cultivating, ploughing and planting only short-term (annual) crops and tending and or harvesting only the already planted perennial crops but not planting new ones, and keeping domestic animals on the suit land. No party not in occupation should enter or purport to occupy and use the land henceforth. The structures already put up on the land should not be pulled down or new ones erected. There should be no quarrying, mining or stone harvesting on the suit land, pending the hearing and determination of the suit and the orders herein shall, unless extended by the Court, lapse after twelve months from the date hereof.



16. Each party to bear its own costs. Mention for compliance with Order 11 of the Civil Procedure Rules to be on 2nd July 2024. Each of the parties is directed to file clearly legible and duly paginated trial bundles containing the parties' pleadings, witnesses' statements and the parties' documents listed in the respective Lists filed in accordance with Order 3 Rule 5 and Order 7 Rule 5 of the Rules. Similarly, the parties to seek instructions in advance of the mention on who of the makers of the documents to be relied on by the adverse party is to be called at the hearing.
17. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM ON THIS 4TH DAY OF APRIL, 2025.

HON. DR. IUR FRED NYAGAKA

JUDGE

