



**Ooro & another v Ogolla (Environment & Land Case
2 of 2021) [2022] KEELC 3307 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3307 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE 2 OF 2021**

**AY KOROSS, J
JULY 28, 2022**

BETWEEN

RICHARD OTIENO OORO 1ST PLAINTIFF

JOHN AWALLA KOORO 2ND PLAINTIFF

AND

WASHINGTON ODHIAMBO OGOLLA DEFENDANT

RULING

Introduction

1. By a plaint dated 27/10/2016, the plaintiffs filed suit against the defendant seeking the following reliefs; they be declared the rightful owners of land parcel number Bondo/Nyangoma/4601 Nyangoma adjudication section (hereinafter “the suit property”) and an order of eviction and permanent injunction be issued against the respondent. They also sought for costs of the suit.
2. Contemporaneously with the plaint, the plaintiff’s filed a motion seeking a temporary injunction restraining the respondent from interfering with the suit property. By a ruling dated 21/11/2018, the court granted the plaintiffs a temporary injunction pending the hearing and determination of the suit.
3. By a memorandum of appearance dated 17/01/2017, the respondent entered appearance and filed a defence dated 25/01/2017 where he pleaded fraud against the plaintiffs. He prayed for the suit to be dismissed with costs.
4. The suit proceeded ex parte and judgment was entered in favour of the plaintiffs on 06/03/2020. Subsequently, the defendant filed a motion dated 13/03/2020 praying that the judgment be set aside; the court granted the same on condition that he pays throw away costs. The plaintiffs subsequently filed a motion dated 24/02/2022 that is the subject of this court’s ruling.



The applicants' case

5. Pursuant to the provisions of Sections 3A and 80 of the *Civil Procedure Act* and Order L Rule 1 of the *Civil Procedure Rules*, the plaintiffs sought several reliefs. Some are spent and the main prayer pending determination is that pending hearing and determination of the suit, temporary injunctive orders do issue restraining the respondent, his agents and servants or anyone acting on his instruction from ploughing, degrading and wasting the suit property and or disturbing the plaintiffs' occupation thereof.
6. The motion is based on the grounds set out on the face of the motion and on the supporting affidavits of the 1st and 2nd plaintiffs both dated 24/02/2022. The plaintiffs contended that the defendant had started ploughing the suit property without their consent and all efforts to amicably resolve the issues had come to a naught. Further, that the defendant had not paid throw away as ordered by the court on 14/10/2022.

The respondent's case

7. In opposition, the respondent filed his written submissions dated 31/03/2022. In it, the defendant stated that he resided on Siaya/Nyangoma/3534 which bordered the suit property and that this parcel [Siaya/Nyangoma/3534] was registered in his father's name. The defendant contended that his clan and that of the plaintiffs had a longstanding dispute concerning the two properties and that his family had been in an open and continuous use of the suit property for a long period of time.

Parties' submissions

8. By the firm of Ithatwa Njama Advocates, the plaintiffs filed written submissions that were undated and unsigned. Be that as it may, they contended that they had met the ingredients of the locus classicus case of *Giella v Cassman Brown Ltd* [1973] EA 358. On prima facie, they averred that they had established a prima facie case because they were the registered proprietors of the suit property. On the irreparable harm, they contended that the defendant's actions would occasion them injury which could not be compensated by way of damages. On balance of convenience, they averred that it tilted in their favour because they were the registered proprietors of the suit property.
9. Despite the orders dated 14/03/2022 directing the parties to file submissions, the defendant failed to file any written submissions.

Analysis and determination

10. I have carefully considered the plaintiffs' motion, grounds in support and their supporting affidavits, the defendant's replying affidavit and the plaintiffs' submissions and the only issue falling for determination is whether the motion is merited.
11. From the perusal of the court, an observation has been observed which may well determine the motion without necessarily delving into its merits. From the plaint and motion, the suit property was described as land parcel number Bondo/Nyangoma/4601. However, the copy of title annexed to the plaintiffs' supporting affidavit shows that the parcel of land in dispute is Siaya/Nyangoma/4601. This property [Siaya/Nyangoma/4601] is registered in the 2nd plaintiff's name.
12. Section 6 of the *Land Registration Act*, provides that the government constitutes areas of land into registration units which are subsequently divided into registration sections. These registration sections are identified by distinctive names and may further be divided into blocks which have distinctive numbers or combinations of numbers and letters. The name of the registration section, the number



and the letter of the block is deemed sufficient reference to a particular parcel of land. This provision of law echoes the provision of Section 18(3) and (4) of the repealed Registered *Land Act*. What these provisions of law imply is that each parcel of land has a unique reference that is distinct from any other parcel of land. Unless otherwise. This leads to the logical conclusion that the two parcels of land alluded to by the plaintiffs are two distinct parcels of land and for that reason I am unable to grant the orders sought.

13. Ultimately, it is my finding that the plaintiff's motion dated 24/02/2022 is not merited and because it is trite law that costs follow the event, I award costs to the defendant. Ultimately, I make the following disposal orders: -
- a) The Notice of Motion dated 24/02/2022 is hereby dismissed with costs to the defendant.
 - b) The defendant to comply with the ruling of the court dated 14/10/2021.
 - c) Matter to be mentioned for directions on 4/10/2022

DELIVERED AND DATED AT SIAYA THIS 28TH DAY OF JULY 2022.

HON. A. Y. KOROSS

JUDGE

28/7/2022

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERRING PLATFORM IN THE PRESENCE OF:**

Mr. Omwenga for 1st & 2nd plaintiff

Mr. Ochanda for defendant

Court assistant: Ishmael Orwa

