



**Odero & another v Bodo (Sued as the Administrator of the Estate of the Late Reuben Bodod Othuon & 8 others) (Environment & Land Case E018 of 2022) [2022] KEELC 13842 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13842 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE E018 OF 2022**

**A OMBWAYO, J**

**OCTOBER 27, 2022**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 38 OF  
THE LIMITATION OF ACTINS ACT (CAP 22) LAWS OF KENYA**

**BETWEEN**

**REV. LUKIO OTIENO ODERO ..... 1<sup>ST</sup> PLAINTIFF**

**ABRAHAM OWEN GUMBA OTIENO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CHURCIL OMOLO BODO (SUED AS THE ADMINISTRATOR OF  
THE ESTATE OF THE LATE REUBEN BODOD OTHUON & 8  
OTHERS) ..... DEFENDANT**

**RULING**

1. Rev Lukio Otieno Odero, Abraham Owen Gumba Otieno herein referred to as plaintiffs have come to this court with an application for injunction against the defendants seeking order that a temporary injunction do issue restraining the respondents, their agents, family, servants and /or whomsoever jointly and severally from sub dividing further, transferring, disposing, or evicting the applicants and their tenants from the original land parcel Kisumu/Kasule/1747 now sub divided into land parcel Kisumu/Kasule/8520,8521, and 8522 and later the subsequent sub division of one of the new title's Kisumu/Kasule/8520 to create land parcels Kisumu/Kasule/8580,8581,8582 and 8523 pending the hearing and determination of this suit. They further pray that the costs of this application be provided for.
2. The application is based on the facts that the 2<sup>nd</sup> defendant sold the original land parcel Kisumu/Kasule/1747 to the 1<sup>st</sup> plaintiff who is the father to the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs. By then, the property



belonged to the deceased 2<sup>nd</sup> defendant but was still a subject of the adjudication process, yet to be registered under the [Registered Land Act](#) (Cap 300) Laws of Kenya (Now repealed).

3. Upon the purchase, the 1<sup>st</sup> plaintiff immediately took possession of the original land parcel Kisumu/Kasule/1747 and has been in actual, physical open, hostile, continuous and uninterrupted possession of the same together with his sons being the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs herein to date for now a period of 41 years.
4. During the stated period in paragraph six (6) above, the plaintiffs proceeded to develop the property with rental residential houses and had the adjacent open field for use by their tenants to the total exclusion of the defendants.
5. Without their knowledge, on the March 13, 1988, the 2<sup>nd</sup> deceased defendant without our knowledge came to be registered as the owner of the original land parcel Kisumu/Kasile/1747. The 2<sup>nd</sup> defendant later passed away.
6. On the May 2, 2007, the 3<sup>rd</sup> defendant who is the son to the 1<sup>st</sup> defendant also without their knowledge transferred the ownership of the original land parcel Kisumu/kasule/1747 creating land parcels Kisumu/Kasule/8520, 8521 and 8522.
7. Once against, the 3<sup>rd</sup> defendant later without their knowledge proceeded to further sub divide land parcel Ksumu/Kasule/8520 creating land parcels Kisumu/Kasule/8580, 8581, 8582 and 8583.
8. The 3<sup>rd</sup> defendant then without their knowledge secretly transferred land parcels Kisumu/Kasule/8521 to the name of the 4<sup>th</sup> defendant, Kisumu/Kasule/8583 to the name of the 7<sup>th</sup> defendant, Kisumu/Kasule 8520 to the name of 8<sup>th</sup> defendant and finally Kisumu/Kasule 8521 to the name of the 4<sup>th</sup> defendant.
9. That the 2<sup>nd</sup> defendant's title to the original land parcel Kisumu/Kasule/1747 was extinguished after 12 years of such possession/occupation by the plaintiffs herein.
10. The 2<sup>nd</sup> defendant continued remaining the registered owners as holding the same in trust for the plaintiffs.
11. The subsequent transfer/and or transmission of the original land parcel Kisumu/Kasule/1747 on May 2, 2007 to the 3<sup>rd</sup> defendant was not lawful in accordance with the law of succession was carried out on the estate of the 2<sup>nd</sup> defendant and there was no confirmed grant issued.
12. In any event, it is affirmative that the rights of the 2<sup>nd</sup> defendant to the original land parcel Kisumu/Kasule/1747 was extinguished after 12 years of such possession/occupation of the land by us and that the 3<sup>rd</sup> defendant's title to the land was subject to the registrable interests of the plaintiffs since their possession of the land crystalized prior to the transfer by registration of the 3<sup>rd</sup> defendant.
13. The subsequent sub divisions of the original land parcel Kisumu/Kasule/1747 by the 3<sup>rd</sup> defendant to create land parcels Kisumu/Kasule/1747 to create land parcels Kisumu/ Kasule/8520, 8521 and 8522 and later the subsequent sub division of the subsequent title Kisumu/Kasule/8520 again by the 3<sup>rd</sup> defendant to create land parcels Kisumu/Kasule/8580,8581,8582 and 8523 was unlawful
14. The sub division of the original land parcel Kisumu/Kasule/1747 to create land parcels Kisumu/kasule/8520, 8520, 8522 and later the subsequent sub division of one of the new titles' Kisumu/Kasule/8520 to create land parcels Kisumu/Kasule/8580, 8581, 8582 and 8523 was unlawful and ought to be cancelled so that the suit property reverts back to its original numbers Kisumu/Kasule/1747 The plaintiff have accordingly lodged a claim for adverse possession.



15. The sub divided lands are now subject to further sub divisions and transfer to other unsuspecting purchasers which will affect the substratum of this suit. The applicants are now exposed to eviction anytime as the respondents intend to evict them and their tenants.
16. The applicants stand to suffer irreparable harm if no conservatory orders are not made.
17. This application and the main suit stand to be rendered nugatory in the event a stay is not granted pending the hearing and determination of the main suit.
18. Nothing was filed in opposition and therefore the application is not opposed. I do find that the plaintiff has established a prima facie case for grant of injunction as the plaintiffs are in possession and are claiming adverse possession. If injunction is not granted the plaintiff are likely to suffer irreparable as the defendants might use force to evict the plaintiffs. The balance of convenience tilts toward granting an order of temporary to *status quo*.
19. The upshot of the above is that an order of temporary injunction do and is hereby issued restraining the respondents, their agents, family, servants and /or whomsoever jointly and severally from sub dividing further, transferring, disposing , or evicting the applicants and their tenants from the original land parcel Kisumu/Kasule/1747 now sub divided into land parcel Kisumu/Kasule/8520,8521, and 8522 and later the subsequent sub division of one of the new title's Kisumu/Kasule/8520 to create land parcels Kisumu/Kasule/8580,8581,8582 and 8523 pending the hearing and determination of this suit and that the costs of this application be in the cause.

**DATED AND DELIVERED AT NAKURU THIS 27<sup>TH</sup> DAY OF OCTOBER, 2022.**

**A.O OMBWAYO**

**JUDGE**

