



**Okom v Ogongo (Environment & Land Case E003 of 2022)
[2022] KEELC 14768 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14768 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE E003 OF 2022
GMA ONGONDO, J
NOVEMBER 16, 2022**

BETWEEN

BENSON OWALLA OKOM PLAINTIFF

AND

FRANCIS ONDITI OGONGO DEFENDANT

RULING

1. By a notice of motion dated April 21, 2022 and duly lodged in court on April 27, 2022 (the application herein), the applicant, Benson Owalla Okom through the firm of Apondi and Company Advocates, is seeking the following orders;
 - a. That, this honourable court be pleased to stay proceedings in Homabay Chief Magistrates Court Succession Cause No 145 of 2019 pending the hearing and determination of the instant suit.
 - b. That, this honourable court be pleased to issue an order maintaining status quo in land parcel number GEM/KAJULU/464 (the suit land herein) in that the applicant to continue being in occupation of the same pending the hearing and determination of the suit.
 - c. That, costs of this application be on cause.
2. In a nutshell, the application is premised upon the applicant's supporting affidavit of 27 paragraphs sworn on even date and the annexed documents marked as 'BOO 1 to BOO 4' which include photos of the suit land. Also, grounds 1 to 21 are in support of the application.
3. The respondent, Francis Onditi Ogongo represented by the firm of Veronica Migai and company advocates further to a notice of appointment dated June 30, 2022 and lodged in court on July 22, 2022, opposed the application by way of a replying affidavit sworn on June 30, 2022 and filed in court on



- July 22, 2022. He deposed, inter alia, that the grounds of the application do not support the orders sought therein. He prays for dismissal of the orders.
4. The application was heard by way of written submissions further to the orders and directions of this court made on May 3, 2022.
 5. Accordingly, learned counsel for the applicant filed submissions dated September 14, 2022 and referred to the orders sought in the application, [*Halsbury's Laws of England 4th Edition Volume 37 pages 330 and 332*](#), Black's Law Dictionary 9th Edition and [*TSS Spinning & Weaving Company Ltd-vs-NIC Bank Ltd and another \(2020\) eKLR*](#), among others. Thus, counsel submitted that the applicant has established grounds for the grant of the prayers in the application.
 6. Learned counsel for the respondent filed submissions dated October 24, 2022. She made reference to Homa Bay CM's Court Succession Cause Number 145 of 2019, section 38 of the [*Limitation of Actions Act*](#) Chapter 22 Laws of Kenya as well as the celebrated case of *Giella-vs-Cassman Brown and Company Ltd (1973) EA 358* hence implored this court to dismiss the application.
 7. I have carefully considered the entire application, the response thereto alongside the parties' respective submissions. So, is there merit in the application?
 8. The applicant/plaintiff commenced this suit by way of an originating summons dated April 21, 2022 and filed herein on April 27, 2022 pursuant to, inter alia, sections 7 and 38 of the [*Limitation of Actions Act*](#) Chapter 21 Laws of Kenya. He has asserted ownership of the suit land by way of adverse possession.
 9. The suit is opposed by way of the defendant's replying affidavit of 25 paragraphs sworn on June 30, 2022 and filed herein on July 22, 2022. He has sought for dismissal of the suit with costs.
 10. The instant application touches on a succession matter as stated in paragraph 1 (a) hereinabove. This court is quite conscious of the term 'Jurisdiction' and the jurisdiction of this court as stated in article 162 (2) (b) of the [*Constitution*](#) of Kenya, 2010, section 13 of the [*Environment and Land Case Act 2015\(2011\)*](#) and in the case of [*Republic-vs-Karisa Chengo and 2 others \(2017\) eKLR*](#); See also Halsbury's Laws of England 4th Edition Volume 9 at page 350.
 11. In [*Hutchings Biemer Ltd-vs-Barclays Bank of Kenya and 2 others 2006 eKLR*](#) the Court of Appeal observed the essence of preservation orders including injunctive orders thus;

' meant to preserve property and maintain the status quo'
 12. It is established law that a court can grant status quo orders over a property in dispute to preserve the same pending the determination or termination of the case; see [*Ogada-vs-Mollin \(2009\) KLR 620*](#)
 13. Additionally, I bear in mind the constitutional and statutory provisions under which the application is generated as well as this court's mandate to grant interim preservation orders including status quo orders under section 13 (7) (a) [*Environment and Land Court Act, 2015 \(2011\)*](#).
 14. Be that as it may, this court is not mandated to deal with succession matters including staying of the same in the manner sought in the application or at all. Therefore, the application is misconceived and misplaced herein
 15. Thus, the application dated April 21, 2022 and lodged herein on April 27, 2022, is devoid of merit. I proceed to disallow the same with costs in the cause.
 16. It is so ordered.

DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 16TH DAY OF NOVEMBER 2022.



GMA ONG'ONDO

JUDGE

Present

1. Mr Achillah TO holding brief for Ms Apondi, learned counsel for the applicant/plaintiff
2. Ms Oriche, learned counsel for the defendant/respondent

