



Ongany (Suing as the Personal Representative of the Estate of Tibias Ongany Okuom - Deceased) v Administrator of the Estate of Nyateng Muga & 4 others (Environment & Land Case E039 of 2024) [2025] KEELC 4076 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4076 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E039 OF 2024**

E ASATI, J

MAY 29, 2025

BETWEEN

HEZBON ODHIAMBO ONGANY (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TIBIAS ONGANY OKUOM - DECEASED) PLAINTIFF

AND

THE ADMINISTRATOR OF THE ESTATE OF NYATENG MUGA 1ST DEFENDANT

LUCAS OLOO AWITI 2ND DEFENDANT

THE LAND REGISTRAR NYANDO REGISTRY 3RD DEFENDANT

THE LAND ADJUDICATION AND SETTLEMENT OFFICER KISUMU/ NYANDO 4TH DEFENDANT

THE HON. ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. This ruling is in respect of the application dated 14th December, 2024 brought by the Plaintiff pursuant to the provisions of article 40 of the *Constitution of Kenya 2010*, sections 68, 69 and 70 of the *Land Registration Act*, Section 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Order 40 Rules 1, 2 and 4 and Order 51 of the *Civil Procedure Rules 2010*. The application seeks for orders that;
 - a. The honourable court be pleased to issue an order of inhibition inhibiting any dealings with land parcel number Kisumu/Nyamware/2311 either by way of transfer, sale, lease, charge or otherwise pending the hearing and determination of this suit.



- b. The honourable court be pleased to issue order of injunction restraining the 1st and 2nd Defendants whether by themselves, agents, representatives, nominee, assigns, succession or anyone acting upon their directives either directly or indirectly from entering, trespassing, occupying, taking possession occupation and use of all that parcel of land known as land parcel No. Kisumu/Nyamware/3411 or any part thereof pending the hearing and determination of this suit.
 - c. The costs of this application be provided.
2. The application was supported by the contents of the Supporting Affidavit sworn by Hezbon Odhiambo on 11th December, 2024 and the annexures thereto.
 3. The application was opposed by the 1st and 2nd Defendants vide the Replying Affidavit sworn by Lucas Oloo Awiti, the 2nd Respondent on 24th April, 2024.
 4. The present application is brought on the grounds that the Plaintiff's family have been living on the suit land for over 90 years and are the registered proprietors/owners of the land parcel number Kisumu/Nyamware/3411 – the suit land herein.
 5. That the Land Registrar recently made a decision awarding the suit land to the 1st Defendant. That unless the orders sought herein are granted, the harm caused to the Plaintiff's family will be far-reaching, irreparable and/or breaches the tenets of public order and harmony.
 6. The 1st and 2nd Respondents' case is that the Plaintiff lacks capacity to institute the suit as the limited Grant he holds expired on 4th November, 2017, long before filing the suit. That the issues placed before court by the Applicant are issues that have been litigated and determined with finality and are therefore res judicata. That the application as misrepresentation of facts presented is marred with non-disclosure of material facts. That the family of the late Nyateng' Muga has now rightfully and legally taken possession of the suit land and has distributed the same to the rightful beneficiaries. That issuing the orders sought will be prejudicial to the said beneficiaries in the circumstances.
 7. Directions were taken that the application be canvassed by way of written submissions.
 8. Written submissions dated 12th May, 2024 were filed on behalf of the Applicant by the firm of Akiro & Associates Advocates. Counsel submitted that the records of the Land Registrar Nyando currently reflects a transfer or registration in favour of the 1st Defendant. That the Plaintiff's family is at risk of being homeless and a public burden in the wake of unjust deprivation of the right to property.
 9. Counsel relied on the cases of *Giella v Cassman Brown* (1973)EA 358, *Vivo Energy Kenya Limited v Maloba Petrol Station & 3 Others* [2015]eKLR among others to support his submissions.
 10. Counsel submitted that the Applicants have a prima facie case with a probability of success and that the Applicants will suffer irreparable injury if the orders sought are not granted.
 11. Counsel relied on the case of *Kenya Electricity Transmission Co. Ltd. v Benson Mwangi*(2015)eKLR where it was held that where family dwelling and burial sites are involved, the same carry a sentimental and cultural significance beyond market value that thus its loss is irreparable.
 12. Relying on the cases *Amir Suleiman v Amboseli Resort Limited* [2004]eKLR and *Hezron Kamau Gichiru v Kianjoya Enterprises Ltd & Another* [20220eKLR Counsel submitted that the balance of convenience tilts in favour of granting the orders sought.
 13. No submissions were filed by or on behalf of the Respondents.



14. I have considered the material placed before me in support and in opposition of the application. The orders sought are for an inhibition and for a temporary injunction pending hearing and determination of the suit. An order of inhibition is essentially a prohibitory injunction issued by the court to temporarily stop registration of any dealings in respect of the subject land. The purpose of the order is to preserve the records in respect of the subject land pending further orders of the court or the occurrence of a given event.
15. The grounds for grant of an order of temporary injunction are set out in Order 40 of the Civil Procedure Rules and the case of *Giella v Cassman Brown Co. Ltd* (1973) 358 that the Applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience.
16. It is not denied that the suit land is now registered in the name of the 1st Defendant as per the records held by the Land Registrar Nyando. The 1st the 2nd Defendants narrated a long history of litigation concerning the suit land which culminated in the land being awarded to the 1st and 2nd Defendants. The Defendants also averred that the land had been distributed to the beneficiaries of the estate of the 1st Defendant. These facts were not controverted at all.
17. The burden to prove the existence of a prima facie case lies with the Plaintiff who has not discharged the same. The Plaintiff did not disclose the existence of previous litigation concerning the suit land and although he claimed that his family was the registered proprietor and owner of the suit land, no evidence was placed before court to show this.
18. I find that the grounds for grant of the orders sought have not been demonstrated.
19. The application is hereby dismissed. Costs to the 1st and 2nd Defendant/Respondents.
20. Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 29TH DAY OF MAY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Akiro for the Plaintiff/Applicant

Onyango Jael for the 1st and 2nd Defendants.

