



**Oganyo (Suing as the Administrator of the Estate of Joseph Onyango Olwalo) v Ouma  
(Environment & Land Case E036 of 2024) [2025] KEELC 467 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 467 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE E036 OF 2024  
SO OKONG'O, J  
FEBRUARY 10, 2025**

**BETWEEN**

**DANCAN OCHIENG OGANYO ..... PLAINTIFF  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOSEPH ONYANGO  
OLWALO**

**AND**

**PETER OKELLO OUMA ..... DEFENDANT**

**RULING**

- 1 What is before me is the Plaintiff's Notice of Motion application dated 29<sup>th</sup> January 2025 brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 40 Rules 1, 2, 3 and 4 of the Civil Procedure Rules and Section 68 of the *Land Registration Act*, 2012. In the application, the Plaintiff has sought; a temporary injunction restraining the Defendant from trespassing on, fencing, constructing on or otherwise interfering with the Plaintiff's quiet possession and enjoyment of all that parcel of land known as Nyando/Wawidhi "A" 1/1346 pending the hearing and determination of the suit, an order of inhibition inhibiting any dealings, alienation, or subdivision of Nyando/Wawidhi "A" 1/1346 (hereinafter referred to as "the suit property") pending the hearing and determination of the suit, and an order compelling the Officer Commanding Station (OCS) Ahero Police Station to ensure compliance with the orders of the court once issued.
- 2 The application which is supported by the affidavit of the Plaintiff sworn on 29<sup>th</sup> January 2025 is brought on the ground that the Plaintiff is the administrator of the estate of Joseph Onyango Olwalo, deceased (deceased) who is the owner of the suit property. The Plaintiff has averred that the deceased acquired the suit property from one, Charles Miruka Owidi through an agreement of sale dated 4<sup>th</sup> January 1984.
- 3 The Plaintiff has averred that the estate of the deceased has enjoyed quiet possession of the suit property since the deceased purchased the same in 1984. The Plaintiff has averred that the Defendant without



the authority or consent of the estate of the deceased entered the suit property and put up a structure thereon.

- 4 The Plaintiff has averred that the said acts of the Defendant are illegal and amount to trespass. The Plaintiff has averred that unless restrained by the court, the Defendant will continue with the acts of trespass complained of.
- 5 The application was served upon the defendant who did not respond to it. When the application came up for hearing on 6<sup>th</sup> February 2025, the Defendant appeared in court and told the court that he had already moved out of the suit property and had no objection to the orders sought being granted. The plaintiff's application is in the circumstances unopposed. That notwithstanding, I am not inclined to grant all the reliefs sought by the Plaintiff. I am of the view that on the facts and the material before me at this stage, what will serve the interest of justice is to restore and maintain the status quo that was prevailing before the Defendant entered the suit property, pending the hearing and determination of the suit. I find no basis for the order of inhibition sought by the Plaintiff. It is not clear to the court whether the suit property has been registered since neither a copy of the title nor a certificate of search has been produced. If the property has not been registered, it would not be possible to register an inhibition against its title since the register will not be in existence.
- 6 It is also not necessary to involve the Police in the dispute at this stage. The Plaintiff is at liberty to move the court to commit the Defendant to prison if he disobeys the orders of the court.
- 7 For the foregoing reasons, I hereby make the following orders in the Plaintiff's application;
1. A temporary Injunction is issued restraining the Defendant by himself or through his agents, servants, employees or anyone claiming through him from trespassing, fencing, constructing on or otherwise interfering with the Plaintiff's quiet possession and enjoyment of all that parcel of land known as Nyando/Wawidhi "A" 1/1346 situated in South East Kano, Kisumu County pending the hearing and determination of the suit.
  2. The costs of the application to be in the cause.

**DELIVERED AND DATED AT KISUMU ON THIS 10<sup>TH</sup> DAY OF FEBRUARY 2025**

**S. OKONG'O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Shelmith for the Plaintiff

The Defendant in person

Ms. J.Omondi-Court Assistant

