



**Akuma v Ontita & another (Environment & Land Petition
E020 of 2024) [2025] KEELC 1054 (KLR) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1054 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND PETITION E020 OF 2024**

M SILA, J

MARCH 5, 2025

BETWEEN

JOSEPH MOSE AKUMA PETITIONER

AND

PASKARIA MOIGE ONTITA 1ST RESPONDENT

LAND REGISTRAR, KISII COUNTY 2ND RESPONDENT

RULING

1. Through a petition filed on 29 November 2024, the petitioner contended to be the registered proprietor of the land parcel Central Kitutu/Mwamanwa/2718. He averred that he obtained the same through transmission and that the land was previously comprised in the title Central Kitutu/Mwamanwa/34 which was registered in the name of his father, William Akuma. He pleaded that through Kisii Succession Case No. 209 of 2000 which the petitioner was not a party to, the 1st respondent obtained an order to have the land parcel Central Kitutu/Mwamanwa/34 divided into two parcels. He contends that the estate of the deceased was administered by himself through Kisii High Court Succession Cause No. 227 of 2000 and he became registered as its proprietor through transmission in June 2001. He contended that through a letter addressed to Court in May 2019, the 2nd respondent, alleged to have cancelled his title to the land parcel Central Kitutu/Mwamanwa/2718 vide a court order issued in Succession Cause No. 209 of 2000. The petitioner contends that the order relied upon does not relate to the said land parcel No. 2718 and does not talk of any cancellation of title. He also alleges that he was never served with the said order. He is aggrieved by the action of the 2nd respondent and wishes to have a declaration that the purported cancellation of the title to the land parcel Central Kitutu/Mwamanwa/2718 is illegal null and void.
2. Together with the petition, the petitioner filed an application dated 29 November 2024 seeking orders to have the respondents restrained by an order of injunction from interfering in any way



with the boundary features of the land parcel Central Kitutu/Mwamanwa/2718 pending hearing and determination of the petition.

3. The respondent has opposed the application through a replying affidavit. She has averred that during adjudication, William Akuma got registered as proprietor of the land parcel No. 34 but he held in trust half share thereof for her late father Nicholas Nyangeri (deceased) who was his brother. When William Akuma died, she approached the petitioner for the half share of her father but he refused to give her. She then filed the succession cause No. 209 of 2000 at Kisii High Court in respect of the estate of William Akuma. The petitioner later also filed a separate cause of his own being succession cause No. 227 of 2000. The petitioner filed an objection in her cause which was referred to arbitration. The arbitration panel held that she was entitled to a half share of the land parcel No. 34. The award was adopted on 18 July 2003. The petitioner filed an appeal to the Court of Appeal being Kisumu Civil Appeal No. 91 of 2005. The appeal was dismissed in a judgment delivered on 29 July 2011. She avers that she discovered that the petitioner had surreptitiously caused the land parcel No. 34 to be subdivided using a grant from succession cause No. 227 of 2000. This led her to file an application to consolidate the two matters i.e succession cause No. 209 of 2000 and No. 227 of 2000 and she also applied to have the grant revoked. She avers that she succeeded to do so in a ruling delivered on 23 April 2020 by Ougo J. Vide that ruling, the grant that caused the transmission of title to the name of the petitioner was revoked and an order issued that title should revert back to the name of the deceased. The court in the same ruling directed that she and the petitioner be joint administrators of the estate of the deceased and for a fresh grant to issue. She thus deposes that the petitioner has been aware since April 2020 that his registration in respect of the suit land was cancelled. She has annexed another ruling dated 26 November 2024 giving the Deputy Registrar permission to sign the requisite documents for partitioning the land parcel No. 34 into two as the petitioner had refused to sign the same.
4. I have considered the application. It is more or less an application for injunction. For one to succeed in such application, he needs to demonstrate a prima facie case with a probability of success; show that he stands to suffer irreparable loss if the order is not granted, and finally if the court is in doubt it will decide the application on a balance of convenience.
5. The complaint of the petitioner in this suit is that the Land Registrar illegally and without notice proceeded to cancel his title to the land parcel No. 2718. I see that this land parcel resulted from a subdivision of the parcel No. 34 which had been subdivided by the petitioner on 15 February 2018 to bring forth the land parcels No. 2718-2720. From the material before me, and especially the ruling of Ougo J, of 23 April 2020, it appears to me that this subdivision was nullified and the court ordered the title to revert back to the parcel No. 34 in name of the deceased. At this stage of the proceedings, what I see is that the Land Registrar acted on the order of the court issued on 23 April 2020 to cancel the title of the petitioner to the suit land. It does not appear to me that the Land Registrar unilaterally went on a frolic of his own to cancel the title to the suit land. Indeed, I have also seen the ruling of Odera J, making an order for the Deputy Registrar to sign all documents required to subdivide the land parcel No. 34 so that the 1st respondent can have her share.
6. In light of the above, I am not persuaded that the petitioner has made out a prima facie case to warrant this court issue an order of injunction in his favour. From the material before me, even this land parcel No. 2718 does not appear to exist any more.
7. For the reasons above, I find no merit in this application and it is hereby dismissed with costs to the respondents. I had earlier issued orders of status quo. The orders are vacated. In essence the petitioner will need to conduct his petition without the benefit of an order of injunction.
8. Orders accordingly.



DATED AND DELIVERED THIS 5TH DAY OF MARCH 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

Delivered in the presence of :

Mr. G.J.M Masese for the applicant

Mr. Ndiritu, State Counsel for the 2nd & 3rd respondents

No appearance for Mr. Momanyi Aunga for 1st respondent

Court Assistant – Michael Oyuko

