



REPUBLIC OF KENYA



KENYA LAW
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**Obonyo v Okoth & another (Environment and Land Case
E034 of 2025) [2025] KEELC 5216 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5216 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE E034 OF 2025**

**E ASATI, J
JULY 10, 2025**

BETWEEN

HENRY OWINO OBONYO PLAINTIFF

AND

GEORGE BUSH OKOTH 1ST DEFENDANT

ELISHA OKOTH 2ND DEFENDANT

RULING

1. The application before court for determination is the Notice of Motion dated 15th May, 2025 expressed to be brought pursuant to the provisions of the Sections 1A, 1B, 63(e) of the [Civil Procedure Act](#) and Order 40 Rules 1 & 2 of the Civil Procedure Rule 2010.
2. The application seeks for orders that;
 - a. Pending the hearing and determination of the suit the Respondent/Defendant by themselves, their agents and/or servant or any other person or any other person authorized by them be restrained by way of a temporary injunction from further encroaching, entering, occupying and remaining in possession of the land parcel Kisumu/Kamagaga/1931, 1932 and 1933 belonging to the Applicant/Plaintiff's family.
 - b. The honourable court be pleased to make such orders as it deems necessary to safeguard the ends of justice.
 - c. The order be served upon the OCS Miwani police station to ensure compliance.
 - d. Costs of the application be provided for.
3. The grounds upon which the application was brought are that the Respondents' acts of ploughing the Plaintiff's lands are unlawful, unfair, illegal, that unless the Respondents'/Defendants' illegal and



unlawful acts are stopped by way of interim orders, the Applicant is likely to suffer irreparable loss. That the Respondents will not suffer prejudice if the application is allowed and that the Respondents' acts will violate the Applicant's family's right to ownership of the land parcel.

4. The application was supported by the contents of the Supporting Affidavit sworn by the Applicant on 15th May, 2025.
5. The application was opposed vide the grounds of Opposition dated 20th May, 2025 namely; that the application is frivolous, scandalous, vexatious and made in bad faith and that the application offends the mandatory provisions of the law since earlier suits touching on the same subject matter had been filed namely; Kisumu H.C. Misc. Application No.60 of 1998, Kisumu HCCC No.349 of 1999, Kisumu HCCC No.328 of 2000 and Civil Suit No.187 of 2000.
6. The application was heard orally on 5th June, 2025 it was submitted on behalf of the applicant that the land belongs to the father of the Plaintiff in respect of whose estate the Plaintiff is the personal representative. That the land is family land to which the Plaintiff has great sentimental attachment. That under Section 26 of the *Land Registration Act*, title to land can only be challenged on grounds of fraud or mistake or that the land was acquired through a corrupt scheme. That the balance of convenience tilts in favour of the Plaintiff who has had possession for the last 27 years.
7. The Respondents relied on the contents of the Replying Affidavit sworn on 28th May, 2025. The Respondent submitted that the suit lands belong to Gatiro Agonda Ondiek as per the adjudication record.
8. The substantive relief sought is an order of temporary injunction. 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 vs 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.
9. The applicant has exhibited title deeds in respect of the suit lands. They show that the applicant's father is one of the registered owners of the suit lands. The applicant also demonstrated that he is the personal representative of the estate of the deceased for purposes of filing of the suit. The applicant claimed that the Respondents only entered the suit land on 12th May 2025 and started to plough in readiness for planting.
10. Although the Respondents claimed to have had occupation of parts of the suit lands and land parcel No Kisumu/Kamagaga/1930 for the past 30 years, there is no evidence to this effect. The Plaintiff also claimed that his family has had occupation for 27 years.
11. Under section 26 of the *Land Registration Act* certificate of title issued by the Land Registrar upon registration shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner subject to the encumbrances, easements and restrictions and conditions contained in the certificate.
12. On the basis of the copies of the title deeds exhibited, the land belongs to the Plaintiff's father. Whether the registration is lawful is a matter to be determined in the hearing. The court finds that the application is merited and hereby allows it as follows:
 - i. Pending the hearing and determination of the suit the Respondents/Defendants by themselves, their agents and/or servant or any other person or any other person authorized by



them are restrained by an order of a temporary injunction from further encroaching, entering or occupying land parcel numbers Kisumu/Kamagaga/1931, 1932 and 1933.

- ii. Costs to abide the suit.
- iii. This ruling to apply to Kisumu ELCLC No E035 of 2025.

Orders accordingly.

**RULING READ AND SIGNED AT KISUMU AND DELIVERED THIS 10TH JULY, 2025
VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Omondi T for the Appellant/Applicant.

1st Respondent present in person.

