



REPUBLIC OF KENYA



**Opon v Board of Governors Tom Mboya Labour College (Environment and Land Case E018 of 2025) [2025] KEELC 5196 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5196 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE E018 OF 2025**

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

**BETWEEN**

**ERIC NYAMUNGA OPON ..... PLAINTIFF**

**AND**

**THE BOARD OF GOVERNORS TOM MBOYA LABOUR  
COLLEGE ..... DEFENDANT**

**RULING**

1. This ruling is in respect of two applications.

**Plaintiff's application**

2. The first application is the Plaintiff's Notice of Motion dated 24th March, 2025 which seeks for;
- a. a temporary injunction restraining the Respondent, its servants and/or agents jointly and severally from blocking the Applicant's access and/or interfering whatsoever with the Applicant's occupation and use of land parcel Kisumu Municipality Block 13/23 pending hearing and determination of the suit.
  - b. the costs of the application be provided for.
3. The grounds upon which the application is brought are that the Plaintiff/Applicant is the registered proprietor of that property known as Kisumu/Municipality Block 13/23 (the suit land herein). That on 18<sup>th</sup> December, 2024, the Applicant was shocked to discover that the Respondent had fenced off the land thereby denying him access to the same. That in mid-January, 2025 the Plaintiff/Applicant discovered further that the Respondent had lodged a caution against the title. That the Respondent has placed security guards on the suit land who are frustrating the applicant and denying him access.



4. The application was supported by the averment in the Supporting Affidavit sworn by the Plaintiff/Applicant on 24<sup>th</sup> March, 2025 and the annexures thereto.
5. The Plaintiff's application was opposed vide the contents of the Replying Affidavit sworn on 2<sup>nd</sup> May, 2025 by Dr. Francis Atwoli in his capacity as Chairman of the Respondent. The substance of the response is that no letter of allotment was attached to the application. That from the contents of the application, the Plaintiff's title is nothing but a piece of paper incapable of conferring rights as the letter of allotment lapsed after 30 days. That the Plaintiff cannot therefore mount a prima facie case with a probability of success. That the title exhibited by the applicant as annexure Eno.2 relates to land parcel No. Kisumu Municipality Block 13/74 which is a totally different parcel of land from the suit land and registered in the name of Thomas Joseph Okeyo.
6. That the Trustees of the Central Organization of Trade Union (COTU) was allocated the entire parcel of land including the part now claimed by the Plaintiff.
7. That the application is an abuse of the process of the court and should be dismissed.
8. Vide the Supplementary Affidavit sworn on 5<sup>th</sup> May, 2025, the Applicant averred that the Respondent's College is not built on the suit land. That the suit land is vacant. That annexure Eno.2 was attached to the application due to a mix up. That the Respondent is registered owner of land parcel known as Kisumu Municipality Block 13/2 which land is distinct and separated from the suit land by two parcels namely Kisumu Municipality Block 13/91 and Block 13/74.

#### **Defendant's application**

9. The second application is the Defendant's Notice of Motion dated 28<sup>th</sup> March, 2025 and expressed to be brought pursuant to the provisions of Order 40 Rule 1(a) of the Civil Procedure Rules and sections 1A & B and 3A of the [Civil Procedure Act](#) Cap 21 Laws of Kenya.
10. The application seeks for orders that;
  - a. the Honourable court be pleased to restrain by temporary order of injunctions, the Plaintiff/Respondent from alienating, selling, charging or any way transferring property known as Kisumu Municipality Block 13/23 pending the hearing and determination of the suit.
  - b. that the court be pleased to make any other order(s) as will be necessary in the interest of substantial justice.
  - c. The costs of the application be provided for.
11. The grounds upon which the application is brought are that there is an on-going dispute between the parties concerning ownership of the suit land. That the Defendant caused a caution to be registered on the land on 15<sup>th</sup> August, 2023. That the caution was removed un-procedurally. That without the caution, the Plaintiff may dispose the property to an unknowing third party to defeat the Defendant's interest.
12. The application was supported by the averment in the Supporting Affidavit of Dr. Francis Atwoli, the Chairman of the Respondent sworn on 28<sup>th</sup> March 2025 and the annexures thereto.
13. The Plaintiff's response to the Defendant's application as contained in the Replying Affidavit sworn by the Plaintiff on 5<sup>th</sup> May, 2025 is that the application is an afterthought and an abuse of the process of the court. That it is not true that the Defendant's college is built on the suit land. That the Defendant is the registered owner of land parcel No. Block 13/2 to which the Plaintiff lays no claim.



14. That in the absence of a counter claim, the Defendant is not entitled to an order of injunction.

### **Submissions**

15. The applications were heard together by way of oral submissions. It was submitted on behalf of the Plaintiff that there are no documents of ownership by the Defendant for the suit land. That the parties do not share a common boundary.
16. That under Section 24 of the [Land Registration Act](#) the Plaintiff as registered owner is entitled to the suit land to the exclusion of everyone else. That the Plaintiff stands to suffer irreparable injury and that the balance of convenience tilts in favour of the Applicant as owner of the suit land.
17. On behalf of the Defendant it was submitted that the provisions under which the Application is brought gives the court discretion to act in the best interest of justice. That the Defendant has sought the intervention of the court because the Plaintiff applied for removal of the caution. Counsel referred the court to Section 73 of the [Land Registration Act](#) on removal of cautions. Counsel submitted further that the Applicant's letter of allotment lapsed and is now null and void.
18. Counsel referred the court to the case of Torino Enterprises Limited vs Hon Attorney General Pet 5 (E006) of 2022 and Dina Management Limited vs County government of Monbasa & 5 others [2021] KECA 503 (KLR) and submitted that the Plaintiff's title is a product of illegality and that the court cannot sanitize the illegalities of the plaintiff.

### **Determination**

19. Both applications were brought pursuant to the provisions of Order 40 Rule 1 of the Civil Procedure Rules and both seek an order of temporary injunction.
20. The grounds for grant of temporary injunction as provided for under Order 40 Rule 1 are inter alia that the Applicant must prove by Affidavit or otherwise that the suit land is in danger of being wasted, destroyed or alienated by any party to the suit or wrongly sold in execution of a decree. Similarly, in the case of *Giella vs Cassman Brown Co. Ltd* (1973) 358 in order for an application for temporary injunction to succeed, 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.
21. While the Plaintiff claims that the suit land is in danger of being taken away from him by the Defendant who has fenced it off and placed guards to stop him from accessing the land, the Defendant claims that the suit land is in danger of being alienated as the caution lodged to preserve the land has been unlawfully removed.
22. There is no doubt that the suit land is registered in the name of the Plaintiff. The Defendant attempts to question the propriety of the Plaintiff's title on the grounds that the letter of allotment had lapsed and could not result in a lawful title to the land.
23. The Plaintiff is the registered owner of the suit land hence entitled to the protection provided by law. The Defendant has no document of ownership in respect of the land. The Defendant's title is in respect of a different parcel of land No. Kisumu Municipality Block 13/2. Although the Defendant claimed that its college is built on the suit land, no evidence has been placed before court to that effect.



24. The court finds that on the basis of the evidence placed before court, the Plaintiff has established a prima facie case with a probability of success. Whether the lease held by the Applicant is valid or null and void, will be a matter of determination in the suit.
25. The Defendants' application seeks to preserve the land from being alienated pending hearing of the suit. Given that the suit land is the subject matter of the suit and as the caution is no longer in place it is important that the land be preserved pending hearing of the suit.
26. For the foregoing reasons, the court finds that both applications have merit and are allowed as follows: -
  - i. An order of temporary injunction is hereby issued restraining the Defendant from blocking the plaintiff's access and/or from interfering whatsoever with the plaintiff's occupation and use of the suit land parcel number Kisumu Municipality/Block 3/23 pending hearing and determination of the suit.
  - ii. The Plaintiff is restrained from alienating, selling, charging or transferring the suit land pending hearing and determination of the suit.
  - iii. Each party to bear own costs of the applications.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 10<sup>TH</sup> DAY OF JULY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

N/A for the Plaintiff.

Aduda for the Defendant.

