



Odera & 6 others (Suing on their own Behalf and on Behalf of all Members of the Kogony Community Claiming Registrable Interest in the Land known as C/18 Scheme) v Gitonga & 5 others (Environment & Land Case E024 of 2025) [2025] KEELC 4997 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4997 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E024 OF 2025**

E ASATI, J

JULY 3, 2025

BETWEEN

- CHRISTABEL ACHIENG ODERA 1ST PLAINTIFF**
- WILSON OGOLA ODENY 2ND PLAINTIFF**
- CARILUS OLANDO ODARI 3RD PLAINTIFF**
- JOSEPH OMOLLO 4TH PLAINTIFF**
- FLORENCE ATIENO ADERA 5TH PLAINTIFF**
- JOHN OKONGO OGENDO 6TH PLAINTIFF**
- MICHAEL JUMA ADEDE 7TH PLAINTIFF**

SUING ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE KOGONY COMMUNITY CLAIMING REGISTRABLE INTEREST IN THE LAND KNOWN AS C/18 SCHEME

AND

- ZACHARY GITONGA 1ST DEFENDANT**
- TITUS ODERO 2ND DEFENDANT**
- CARILUS OLANDO ODARI 3RD DEFENDANT**
- WILLIAM A. ACHIENG 4TH DEFENDANT**
- ESTHER NYAMACHE 5TH DEFENDANT**
- SUSAN BUTIYA 6TH DEFENDANT**



RULING

1. This ruling is in respect of the Notice of Motion application dated 22nd April, 2025 expressed to be brought pursuant to the provisions of Order 40 Rules 1, 2 and 3, Order 20 Rule 1, Order 51 Rule 3 of the Civil Procedure Rules and sections 1A, 1B and 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya.
2. The application seeks for an order of the temporary injunction restraining the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Defendant by themselves or their servants, or agents or proxies or any of them from alienating, selling, offering for sale, transferring or carrying out or effecting any survey or sub-division of all the parcel forming part of Kogony C – 18 Scheme or in any way whatsoever dealing with any of those parcels of land including L.R. No.27677, 27678, 27679, 27680 and 27681 pending the hearing and determination of the suit.
3. The grounds upon which the application was brought are that the Applicants are the beneficiary owners of all that parcel of land known as Kisumu/Kogony C-18 scheme which is ancestral land.
4. That there is a judgement in Kisumu ELC NO.146 OF 2012 to the effect that land known as Kogony C – 18 scheme did not exist in the survey record, that the suit property had been registered as part of Kogony registration section map/Diagram Sheet 18 and not limited to Kisumu/Kogony/5000 to 6012 belonging to Kogony clan/community, that the Applicants herein ignored the court judgement in ELC 146 of 2012 and proceeded to alienate and cause damage to the suit property by starting to put up a perimeter wall which is on-going. That the court ordered for cancellation of titles already issued.
5. That sometime on 21st March, 2025, the Respondent begun ferrying building materials to the suit property and that the Applicant discovered that the Respondents own L.R. No.27677, 27678, 27679, 27680 and 27681 which fall within the cancelled titles.
6. That the Respondents are constructing a wall and that unless stopped by an order of the court, the whole suit may be overtaken by events.
7. The application was supported by the contents of the Supporting Affidavit. Another Affidavit of Service sworn by Julius Nyakianga Advocate on 8th May, 2025 shows that the Kan Advocates were served with the application, among other documents, on behalf of the Defendants.
8. Affidavit of service sworn by the same deponent on 30th May, 2025 shows that the Respondents were served personally with the application alongside other court documents.
9. When the application came up for hearing on 3rd June, 2025, which date was taken by consent between Counsel for the Plaintiffs and Counsel for the 1st Respondent, there was no attendance for the 1st Defendant/Respondent. There was also no response filed to the application by any of the Respondents.
10. Counsel for the Applicants urged the court to allow the application as the same was unopposed.
11. I have seen the judgement in ELC NO.146 OF 2012 which adjudged the suit land in favour of the Applicants herein. I have also seen the photographs showing construction of the perimeter wall in progress.
12. The judgement directed that title deed issued be cancelled. It was submitted on behalf of the Applicants that the process of cancellation of the titles was ongoing.



13. The application was unopposed. On the basis of the material placed before the court, the court finds that the Applicants have demonstrated a prima facie case with a probability of success. The court finds that the application has merit and hereby allows it. Costs are awarded to the Applicants.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 3RD DAY OF JULY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Nyakiangana for the Plaintiff/ Applicant

Kinoti h/b for Njenga for the 1st Defendant/Respondent

