



**Okumu (Suing as the legal administrator of the Estate of Moses Okumu Yugi (Deceased) v Abongo (Sued in her personal and representative capacities as the legal administrator of the Estate of Jairo Awino (Deceased) & another (Environment & Land Case E004 of 2024) [2024] KEELC 1297 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1297 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY**

**ENVIRONMENT & LAND CASE E004 OF 2024**

**GMA ONGONDO, J**

**MARCH 6, 2024**

**IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ACQUISITION OF TITLE BY ADVERSE POSSESSION OF A DEFINED PORTION OF LAND PARCEL WEST**

**KASIPUL/KONUONGA/501**

**BETWEEN**

**BETWEEN**

**ESTHER ADUOL OKUMU (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF MOSES OKUMU YUGI (DECEASED)) ..... APPLICANT**

**AND**

**JANE AUMA ABONGO (SUED IN HER PERSONAL AND REPRESENTATIVE CAPACITIES AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF JAIRO AWINO (DECEASED)) ..... 1<sup>ST</sup> RESPONDENT**

**SILAS OTIENO OKUMU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a notice of Motion application dated 12th February 2024, the applicant herein through Onyango Otunga and Company Advocates, is seeking the following orders;
  - a. Moot
  - b. Moot



- c. That this Honourable Court be pleased to issue an Order of temporary injunction against the Respondents restraining them, whether by themselves, their agents, servants or employees from charging, transferring, selling, evicting or denying the Applicant and her family access to the portion measuring 0.06 Hectares on L.R No. West Kasipul/Konuonga/501 and/or in anyway interfering with the Applicant's quite possession thereof pending hearing and determination of this suit.
  - d. That the O.C.S Oyugis Police Station to ensure this order is enforced.
  - e. The costs of this application be provided for.
2. The application is supported by the applicant's affidavit of twenty-five paragraphs and grounds I to VI set out on the face of the application which include;
    - a. That the 2<sup>nd</sup> Respondent has recently beacons and fenced off part of the Applicant's homestead, disturbing the Applicant's peace and denying her, her rights over the land.
    - b. That it is in the interest of justice that the Order sought is issued to restrain the 2<sup>nd</sup> Respondent's actions and retain status of the land pending hearing and determination of the suit.
  3. It is trite law that the court has a duty to ensure that the respondent is made aware of the existence of the matter before it and to have the respondent served with all the necessary papers. The respondent has the right to appear or decline to appear in the matter; see *Ogada versus Mollin* (2009) KLR 620.
  4. The respondents were duly served with the application as disclosed in affidavits of service sworn on 22nd February 2024 and 29th February 2024 and as affirmed by Ms E.A Onyango learned counsel for the applicant. Be that as it may, there is no response to the application.
  5. Order 40 of the *Civil Procedure Rules*, 2010 provides for temporary injunctions and interlocutory Orders. In *Hutchings Biemer Ltd-vs-Barclays Bank of Kenya Ltd & 2 others* (2006) eKLR, the Court of Appeal remarked;

“.....injunctive orders are meant to preserve property and maintain the status quo.....”
  6. In the circumstances, the application is firm and meritorious. The applicant is deserving of the prayers in the application.
  7. Wherefore, the application is hereby allowed in terms of the orders set out in paragraph 1 (c) and (d) hereinabove with costs to the applicant.
  8. It is so ordered.

**DATED AND DELIVERED AT HOMA BAY THIS 6<sup>TH</sup> DAY OF MARCH 2024.**

**G. M A ONG'ONDO**

**JUDGE**

PRESENT;

- a. Ms E. A Onyango learned counsel for the applicant
- b. T. Luanga, court assistant

