



**George Peter Kaluma t/a LMK Investment v Oyopudo & 2 others (Environment and Land Appeal E016 of 2024) [2024] KEELC 5029 (KLR) (2 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5029 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT AND LAND APPEAL E016 OF 2024  
GMA ONGONDO, J  
JULY 2, 2024**

**BETWEEN**

**GEORGE PETER KALUMA T/A LMK INVESTMENT ..... APPELLANT**

**AND**

**ALFRED OSORO OYOPUDO ..... 1<sup>ST</sup> RESPONDENT**

**JACOB DWALO ORIADO ..... 2<sup>ND</sup> RESPONDENT**

**CYNTHIA ACHIENG ABIERO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 23<sup>rd</sup> May 2024 originated under, inter alia, Articles 40, 48 and 51 of the *Constitution of Kenya* 2010 and sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya (The application herein), the appellant/applicant through Quinter Adoyo and Company Advocates is seeking the orders of temporary injunction against the respondents, an order directing the Land Registrar Homa Bay to register a restriction on each of the titles to the suit parcels of land reference numbers Kanyada/Kotieno/Katuma A/ 2983, 2984 and 2528 pending the hearing and determination of this appeal and costs of the application to abide the outcome of the appeal..
2. The application is premised upon the applicant's supporting affidavit and copies of the accompanying documents inclusive sale of land agreement and certificate of confirmation of grant. Also, the application is based on the grounds set out on the face of it. Briefly, the appellant/applicant's lamentation is that he bought the property comprising of the suit parcels of land from Johanna Wanguba (Deceased) in the year 2011. That the respondents forged death certificate, chief's letter and other documents and subdivided the land in dispute which is likely to interfere with the appellant/applicant's peaceful possession and occupation of the suit parcels of land. That the interim orders sought in the application are in the interest of justice herein.



3. It is trite law that a party to a matter including an appeal, must be made aware of it's existence to enable that party to defend same or not; see *Ogada-vs-Mollin* (2009) KLR 620.
4. Notably, the respondents were duly served with the application as discerned in the affidavit of service sworn on 1st July 2024 by Quinter Adhiambo Adoyo learned counsel for the appellant/applicant.
5. In that regard, the respondents were accorded a fair opportunity to respond to the application in the spirit of Articles 48 and 50 (1) of the *Constitution of Kenya* 2010; see also *James Kanyita Nderitu and another -vs-Marios Philotas Gikhas and another* (2016) eKLR.
6. I consider the application for directions inter-partes in entirety. This court is guided by Article 159 (2) (b) and (e) of the *Constitution of Kenya* 2010 as well as the Constitutional and statutory provisions under which the application is commenced, sections 3 and 19 of the *Environment and Land Court Act* 2016 (2011) and Practice Direction number 32 of the Environment and Land Court Practice Directions 2014.
7. Mr Jack Otieno instructed by Quinter Adoyo learned counsel for the appellant/applicant has implored the court to find the application unchallenged and grant the orders of status quo and restriction on each of the titles to the suit parcels of land pending the hearing and disposal of this appeal in the interest of justice.
8. Clearly, the application is firm, cogent and meritorious.
9. Thus, the application is allowed in the terms infra;
  - a. Status quo obtaining over the suit parcels of land be maintained pending the hearing and determination of this appeal. In particular, the respondents shall not sell, transfer, fence, develop or further subdivide or in any manner dispose of the suit parcels of land pending the outcome of the appeal.
  - b. The Land Registrar Homa Bay shall forthwith register restriction on each of the titles to the suit parcels of land pending the hearing and determination of this appeal.
  - c. The costs of the application to abide the outcome of the appeal.
10. This appeal mounted by way of the memorandum of appeal dated 30th April 2024 duly admitted, is fixed for directions on 18th September 2024.
11. The respondents be served accordingly.
12. It is so ordered.

**VIRTUALLY DATED AND DELIVERED AT HOMA BAY THIS 2<sup>ND</sup> DAY OF JULY 2024.**

**GEORGE M. A ONG'ONDO**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

**Present;**

1. Mr. Jack Otieno instructed by Quinter Adoyo learned counsel for the appellant/applicant



2. M.r Luanga, court assistant

