



**Odongo v Sindala & another (Environmental and Land Originating  
Summons E007 of 2022) [2024] KEELC 5213 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5213 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2022  
GMA ONGONDO, J  
JULY 9, 2024**

**BETWEEN**

**GODMARK AGOLA ODONGO ..... PLAINTIFF**

**AND**

**KENNEDY OTIENO SINDALA ..... 1<sup>ST</sup> DEFENDANT**

**BENARD ODHIAMBO OWITI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The present ruling is with regard to an application by way of a Notice of motion dated 4th April 2024 by the plaintiff/applicant, Godmark Agola Odongo represented by Nancy Nyarige and Company Advocates for the orders infra;
  - a. The Honourable Court be pleased to issue an order of temporary injunction restraining defendants or anyone deriving authority and/or interest from them from entering into, erecting any structure, cultivating and/or dealing with Land Parcel Number West Karachuonyo/Kawadhgone/379 (The suit land herein) in any manner adverse to the plaintiff's peaceful use and occupation pending the hearing and determination of the main suit.
  - b. The Honourable Court be pleased to issue an order of inhibition inhibiting the registration of any dealings on the suit land pending the hearing and determination of this suit and the Land Registrar Rachuonyo Sub-County be directed to register the inhibition accordingly.
  - c. The costs of this application be awarded to the applicant.
2. The application is based on the applicant's supporting affidavit alongside the grounds on it's face which include;
  - a. The plaintiff is presently in actual possession, occupation and use of the suit land, where he has constructed a posho mill and rental houses.



- b. The defendants have without any reason or consent of the plaintiff entered into a portion of the suit land where the plaintiff's posho mill is erected, demolished the same and put up a temporary galvanized iron sheet structure.
  - c. The defendants are planning to sell and subdivide the suit land and should the defendants alienate the title of the suit parcel and/or continue with any activities on the suit parcel the whole suit shall be rendered nugatory unless an order for injunction and inhibition are issued pending the determination of the suit.
  - d. The defendants shall not suffer any prejudice should the application be allowed.
3. Ms. Nancy Nyarige learned counsel for the applicant has proposed that the application be disposed of by way of status quo order to preserve the suit land pending the outcome of this suit. That the parties to attempt to resolve their dispute through Alternative Dispute Resolution (ADR) mechanisms.
  4. Ms. F. Amondi learned counsel for the defendants/respondents has affirmed the said proposal.
  5. In the circumstances, is the proposed order in the application merited?
  6. This court is mandated under section 13 (7) (a) of the Environment and Land Court Act 2015 (2011) to grant interim preservation orders where appropriate. Status quo orders are envisaged thereunder.
  7. It is established law that *status quo* order is meant to preserve the suit property until the suit is determined or terminated; see Ogada v Mollin (2009) KLR 620.
  8. In the circumstances, it is common ground that the status quo obtaining in respect of the suit land, be maintained by the parties pending the outcome of the suit. That the parties to attempt ADR in this suit.
  9. Indeed, the application is not challenged and the same is merited.
  10. Wherefore, the application is determined in the following terms;
    - a. There be *status quo* obtaining over the suit land pending the hearing and determination of this suit. In particular, the parties shall not sell, transfer, sub divide, charge or in any manner alter the character of the suit land pending the hearing and determination of the suit.
    - b. Costs of the application to be in the cause.
  11. Since the parties have proposed to embrace ADR mechanisms in resolving this dispute, they are encouraged to so pursuant to Article 159 (2) (c) of the Constitution of Kenya 2010.
  12. The suit is fixed for directions on 7<sup>th</sup> October 2024.
  13. It is so ordered.

**DATED AND DELIVERED AT HOMA BAY THIS 9<sup>TH</sup> DAY OF JULY 2024.**

**G.M. A ONG'ONDO**

**JUDGE**

Present;

Ms. N.Nyarige learned counsel for the plaintiff/applicant.

Ms. F.Amondi learned counsel for the defendants/respondents.

Mr. T. Luanga, court assistant.

