



Owuor v Attorney General & another (Environment & Land Case E006 of 2024) [2024] KEELC 5042 (KLR) (2 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5042 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE E006 OF 2024
GMA ONGONDO, J
JULY 2, 2024**

BETWEEN

PHILIP OTIENO OWUOR PLAINTIFF

AND

THE HONOURABLE ATTORNEY GENERAL 1ST DEFENDANT

THE LAND REGISTRAR RACHUONYO 2ND DEFENDANT

RULING

1. This ruling is in respect of an application by way of a Notice of Motion dated 23rd May 2024 by the plaintiff/applicant through S M Sagwe and Company Advocates for two principal orders as follows;
 - a. A temporary injunction against the respondents, restraining them, their agents and or servants from causing damage on the boundaries of the suit land reference number Kabondo/Kodumo East/293 which is intact by features of Cyprus trees, white gum trees and sisal plant pending the hearing and determination of this suit.
 - b. The 2nd defendant/respondent be restrained from giving any order of destruction of any building plantation on the suit land measuring 18.1 acres in area using illegal and fraudulent documents pending the hearing and determination of this suit.
 - c. The costs of the application be provided for.
2. The anchorage of the application is the applicant's supporting affidavit of nine paragraphs and copies of the accompanying documents inclusive of land certificate and register of the suit land. Also, the application is based on grounds 1 to 4 set out on it's face. The applicant's lamentation in part is that the boundaries of the suit land are intact and the same be maintained pending the outcome of this suit for justice to prevail.



3. It is trite law that a party to a case must be made aware of the existence of the same to enable the party to defend it or not; see *Ogada v Mollin* (2009) KLR 620.
4. The defendants/respondents were duly served with the application as disclosed in the affidavit of service sworn on 28th June 2024 by Peter Cherere Sagwe, an authorised process server of this court.
5. The respondents filed a memorandum of appearance dated 3rd June 2024. However, they failed to file any reply to the application herein.
6. Indeed, the respondents were accorded an opportunity to respond to the application in the spirit of Articles 48 and 50 (1) of the *Constitution* of Kenya 2010; see also *James Kanyiita Nderitu and another v Marios Philotas Gikhas and another* (2016) eKLR.
7. Mr Sagwe learned counsel for the plaintiff/applicant has therefore, urged the court to find the application unopposed and grant the orders sought therein in the interest of justice.
8. Clearly, the application is unchallenged and meritorious.
9. Thus, the application is allowed in terms of orders (c) and (d) sought therein and as stated in paragraph 1 (a) and (b) hereinabove.
10. The costs of the application be in the cause.
11. Mention of the suit on 30th September 2024 and the defendants/respondents be served accordingly.

VIRTUALLY DATED AND DELIVERED AT HOMA BAY THIS 2ND DAY OF JULY 2024.

GEORGE M A ONG'ONDO

JUDGE

PRESENT;

Mr. S M Sagwe learned counsel for the plaintiff/applicant

Mr. Luanga, court assistant

