



**Obuya v Okello & 2 others (Environment and Land Appeal  
E56 of 2022) [2023] KEELC 20452 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20452 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT AND LAND APPEAL E56 OF 2022  
GMA ONGONDO, J  
OCTOBER 3, 2023**

**BETWEEN**

**JANE OINGA OBUYA ..... APPELLANT**

**AND**

**AWUOR OKELLO ..... 1<sup>ST</sup> RESPONDENT**

**PETER NGERE OKOMBA ..... 2<sup>ND</sup> RESPONDENT**

**DANIEL ODHIAMBO OKOMBA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is in respect to an application by way of Notice of motion (ex-parte) dated February 6, 2023 by the applicant/appellant, James Odinga Abuya through Madoro Khairalla and company Advocates pursuant to order 40 rule 1 and 2 and order 51 of the civil procedure rules section 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya and any other enabling provisions of the law.
2. The applicant is seeking the following orders.
  - a. Spent
  - b. The Honourable Court do issue a restraining order to the defendants herein on their employees, servants or agents, hirelings or any other family members from trespassing, encroaching and/or intruding upon the suit parcel of land.
  - c. The Honourable Court be pleased to issue eviction orders evicting the defendants herein this suit parcel of land number 1573/Kaksingri West 'B'
  - d. The Honourable Court do issue a restraining order to the defendant, their employees, servants, agents and hirelings from interfering, appropriating, ploughing, planting crops upon the suit parcel of land.



- e. The Honourable Court do issue restraining order restraining the defendant /respondents herein from interfering and/or destroying the boundaries upon the suit parcel of land
3. The three (3) respondents/defendants through Nancy Nyarige and Company Advocates opposed the application by way of a replying affidavit sworn on May 19, 2023 by the 3<sup>rd</sup> defendant, David Odhiambo Oyambo for and on behalf of himself and the other defendants.
4. Ms E.Kijana holding brief for N. Nyarige learned counsel for the respondents has proposed that:

“ .... may the Notice of Motion be disposed of by way of orders of status quo made on May 22, 2023 pending the hearing and determination of this appeal...”
5. Mr. Madoro learned counsel for the applicant has affirmed the respondents’ proposal.
6. In the circumstances, I find the application hereby compromised and determined thus:
  - a. The *status quo* obtaining on the suit land, LR No 1573/Kaksingir West “B” be maintained pending the hearing and determination of this appeal. In particular, the respondents shall not erect any permanent structure thereon or carry out any excavation or destruction of the suit land and the applicant shall not sell or dispose of the land during the said period.
  - b. Cost of the application to abide the outcome of this appeal.
7. The parties represented by their respective counsel are applauded for having moved this court to have this application determined in line with Article 159(2) (c) of the [Constitution of Kenya, 2010](#) .
8. It is so ordered.

**DELIVERED AND DATED AT HOMABAY THIS 3<sup>RD</sup> DAY OF OCTOBER 2023.**

**G.M.A ONG’ONDO**

**JUDGE**

**In the Presence of:**

1. Madoro, learned counsel for the applicant.
2. Kijana holding brief for Nyarige learned counsel for respondents.
3. Court Assistant, Luanga.

