



**Okwalo v Echesa & another (Environment & Land Case 609 of 2014)
[2023] KEELC 20370 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20370 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 609 OF 2014
DO OHUNGO, J
OCTOBER 3, 2023**

BETWEEN

FRANCIS SHIRIMA OKWALO PLAINTIFF

AND

PATRICK OKOTH ECHESA 1ST DEFENDANT

KASSIM OSORE OSUNDWA 2ND DEFENDANT

RULING

1. Judgment was delivered in this matter on July 24, 2019 by N.A. Matheka, J as follows:

I find that the plaintiff has established his case on a balance of probabilities against the 1st defendant and I grant the following orders;

1. That the plaintiff/applicant be declared the owner of half the portion out of land parcel No. N. Wanga/Indangalasia/1113 whose boundaries are to be determined by the County Land Surveyor and which he occupies and to which he is entitled to by virtue of adverse possession and which the 1st defendant/respondent be ordered to transfer the said portion of land to the plaintiff/applicant.
2. That in default of the 1st defendant/respondent transferring the same voluntarily the court do make an order authorizing the Deputy Registrar of the Court to execute all documents necessary to effect the subdivision and transfer of the portion of the aforesaid land to the plaintiff/applicant.
3. No orders as to costs as the parties are relatives.



2. Subsequently, the first defendant filed Notice of Motion dated May 16, 2023, which is the subject of this ruling. The following orders are sought in the application:
 1. That the firm of J.W. Nafuye & Co. Advocates be granted leave to come on record as the advocates for the Applicant/1st Respondent herein in place of the firm of Namatsi & Co. Advocates.
 2. That the caution lodged on the October 12, 2005 on land parcel no. North Wanga/Indangalasia/113 by Shirima Okwalo be removed.
 3. That the restriction restricting dealings on land parcel no. North Wanga/Indangalasia/113 on the April 24, 2006 be lifted.
 4. That an order of injunction be and is hereby issued restraining Francis Shirima Okwalo whether by himself, his agents, workers and or servants from alienating, selling or in any way interfering with the Applicant's Patrick Okoth Echesa 10 acres out of land parcel no. N. Wanga/Indangalasia/113.
 5. That the costs of this application be provided for.
3. The application is supported by an affidavit sworn by the first defendant/applicant. He deposed that following the judgment, he sought the services of the County Surveyor who caused sub-division of the suit parcel and thereafter mutation drawn which was presented to the Land Registrar, but the Respondent removed the boundary that was created and interfered with the applicant's half of the suit parcel. That registration cannot be done as there is a caution and restriction registered by the plaintiff as entry numbers 2 and 8 respectively in the encumbrance section of the suit parcel title. He added that he has applied for the entries to be removed but the Land Registrar declined.
4. Although evidence of service was availed, the respondents neither filed a response to the application nor attended court at its hearing. Counsel for the applicant urged the court to grant the orders sought.
5. I have considered the application and the material placed before the court. The application is unopposed. The applicant has annexed a copy of certificate of official search in respect of land parcel number N. Wanga/Indangalasia/1113 as on September 22, 2022. It shows that a caution was registered on 14th February 2006 as entry number 3 in favour of the plaintiff herein. It also shows that a restriction was registered on April 24, 2006 as entry number 4 restricting dealings pending determination of this suit. Following delivery of the judgment, the restriction is due for removal.
6. I find merit in prayers 1, 2, and 3 of the application but with a few modifications as to dates. Regarding prayer 4, I note that it introduces a new prayer that is not covered by the decree. Following delivery of the judgment, the court became functus officio and cannot now modify the decree in the manner sought at prayer 4 of the application. Thus, I will not grant the said prayer.
7. I therefore make the following orders:
 - a. The firm of J.W. Nafuye & Co. Advocates is granted leave to come on record as the advocates for the first defendant herein in place of the firm of Namatsi & Co. Advocates.
 - b. The caution registered on February 14, 2006 on land parcel number North Wanga/Indangalasia/113 by Shirima Okwalo is hereby removed.
 - c. The restriction registered on land parcel number North Wanga/Indangalasia/113 on April 24, 2006 is hereby lifted.



d. In line with the judgment, I make no order as to costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 3RD DAY OF OCTOBER 2023.

D. O. OHUNGO

JUDGE

