



**Okwara v Madimwa & another (Environment & Land Case
143 of 2015) [2023] KEELC 21274 (KLR) (7 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21274 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 143 OF 2015
BN OLAO, J
NOVEMBER 7, 2023**

BETWEEN

MOSES O OKWARA PLAINTIFF

AND

JAPHETH A MADIMWA 1ST DEFENDANT

JAMES NYONGESA AKUMU 2ND DEFENDANT

RULING

1. The dispute herein between Moses O. Okwara (the Plaintiff) and Joseph A. Madimwa and James Nyongesa Akumu (the 1st and 2nd Defendants respectively) over the ownership of the land parcel NO Bukhayo/Ebusibwabo/962 (the suit land), was heard and determined by Omollo J. Vide a Judgment delivered on 10th March 2022, the Judge made the following disposal orders:
 - a. A permanent injunction be and is hereby issued against the 1st Defendant, his agents, servants, family members, workers and any other person claiming through him from interfering with the Plaintiff's occupation of the 2½ acres comprised in the land reference number Bukhayo/Ebusibwabo/962; and
 - b. Each party to meet their respective costs of the suit.No appeal appears to have been filed against the judgment.
2. I now have for my determination the Plaintiff's Notice of Motion dated 8th September 2022 seeking the following orders:
 1. This Honourable Court do issue an order directing the County Surveyor Busia to proceed to L.R NO Bukhayo/Ebusibwabo/962 with a view to curving out 2½ acres therefrom in favour of the Plaintiff.



2. That the Officer Commanding [OCS] Nambale Police Station do provide security during the said exercise.
3. The application is based on the grounds set out therein and is also supported by the affidavit of the Plaintiff.
4. The gist of the application is that there is already a judgment in the Plaintiff's favour by which he was awarded 2½ acres out of the suit land. No appeal has been preferred against that judgment delivered on 10th March 2022 and therefore the orders sought should be granted. A copy of the said judgment is annexed to the application.
5. When the application was placed before me for directions, I ordered that it be canvassed by way of written submission.
6. Though served with the application and the Plaintiff's submissions, the 1st Defendant did not file any responses. The 2nd Defendant was never served and therefore the orders herein will relate to only the 1st Defendant.
7. I have considered the application, un-opposed as it is. I would have thought that having approached this Court seeking an order of a permanent injunction, the Plaintiff already knew not only the size of the land but also that it was already demarcated. How else could he be seeking an order to injunct the Defendants from an imprecise parcel of land? Nonetheless, the application is not opposed and this Court can only presume that the 1st Defendant, who was the only one served as per the Court records and who did not respond to it, is aware about what portion the surveyor needs to curve out of the suit land and that he will comply accordingly.
8. The application is accordingly allowed as against the 1st Defendant in the following terms:
 1. The County Surveyor Busia to proceed to the Land parcel NO Bukhayo/Ebusibwabo/962 and curve out 2½ acres therefrom in favour of the Plaintiff.
 2. The 1st Defendant and those acting under him must comply with the above order and ensure that he and anybody acting through him does not hinder that process.
 3. In default of (2) above, the Plaintiff will be at liberty to seek protection from the Office Commanding [OCS] Nambale Police Station.
 4. No orders as to costs.

BOAZ N. OLAO

JUDGE

7TH NOVEMBER 2023

RULING DATED, SIGNED AND DELIVERED ON THIS 7TH DAY OF NOVEMBER 2023 TO THE PLAINTIFF'S COUNSEL BY WAY OF ELECTRONIC MAIL.

Since the 1st Defendant neither entered appearance nor filed any defence, counsel for the Plaintiff shall serve a copy of this ruling upon him.

BOAZ N. OLAO

JUDGE

7TH NOVEMBER 2023

