



REPUBLIC OF KENYA



**Ogoma v Wasike & another (Environment & Land Case E013 of 2023)
[2023] KEELC 21248 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21248 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E013 OF 2023
BN OLAO, J
NOVEMBER 3, 2023**

BETWEEN

ALEXANDER OBUWA OGOMA APPLICANT

AND

PETER CLAVER WASIKE 1ST RESPONDENT

MARGARET WASIKE 2ND RESPONDENT

RULING

1. Alexander Obuwa Ogoma (the Applicant) has vide his notice of motion dated April 27, 2023 and predicated under the provisions of sections 1, 1A, 1B, 3, 3A and 63(e) of the [Civil Procedure Act](#) as well as order 40 rule 1 and 2 of the [Civil Procedure Rules](#) and order 51 of the same Rules sought the following remedies:
 1. Spent
 2. Spent
 3. That this Honourable Court do issue an order of temporary injunction against the Respondents, their servants, workers, agents or any other person claiming through them for fencing off, alienating, constructing on, or in any other manner whatsoever interfering with the land parcel NO Bunyala/Bulemia/533 now sub-divided to create parcel NO Bunyala/Bulemia/2745 and 2746 pending the hearing and determination of this suit.
 4. That the Officer Commanding Port Victoria Police Station (OCS) do assist in effecting this order.
 5. That costs of the application be provided for.



2. The application which is the subject of this ruling is based on the grounds set out therein and is supported by the Applicant's application dated 30th March 2023.
3. The basis of the application is that the Applicant has been in peaceful, quiet, continuous and uninterrupted possession of the land parcel NO Bunyala/Bulemia/2746 (the suit land) since 1973 which is now over 50 years. That has prompted him to file an Originating Summons seeking orders that he has acquired the suit land by way of adverse possession. Upon being served with the said Originating Summons, Peter Claver Wasike And Margaret Wasike (the 1st and 2nd Respondents respectively) together with their agents moved to the suit land and fenced it off on 20th April 2023 thus denying the Applicant access to his house.
4. That action by the Respondents is an act of impunity and it has caused the Applicant mental stress, anguish and unnecessary pressure.
5. Annexed to the application are photographs of a fence and gate – annexures A002 (a), (b), (c), (d), (e), (f) and (g).
6. In opposition, the 1st Respondent has filed a replying affidavit dated 13th June 2023 in which he has deposed, inter alia, that he is the son to the late Joseph Wasike who died intestate leaving the suit land as part of his estate. That he and the 2nd Respondent were registered as proprietors of the suit land by way of transmission following succession proceedings in Busia Chief Magistrate's Succession Cause No 243 of 2016. That nobody caused any objection when the matter was published in the Kenya Gazette. Further, that the Applicant does not occupy the suit land and the photographs annexed are on a different parcel of land and at no time has he or the 2nd Respondent contemplated fencing off or selling the suit land. Therefore, a temporary injunction cannot issue due to the fact that the land allegedly occupied by the Applicant does not form part of the suit land. The Court should therefore order the County Land Registrar and Surveyor to visit the ground and make a report on the situation on the ground before making a determination on the application. That is a reasonable invitation which I think I shall take and make appropriate orders later in this ruling.
7. When the application was placed before me on 4th May 2023, I directed that it be canvassed by way of written submissions.
8. The Applicant was to file his submissions on or before 18th May 2023. He did not do so but the Respondent filed theirs on 16th July 2023.
9. I have considered the application, the replying affidavit as well as the submissions by counsel for the Respondent.
10. Although the Applicant alleges that his house is on the suit land, the Respondents claim that the Applicant's house is on a different parcel of land. The Respondents counsel has gone on to submit as follows at page 2 of his submissions:

“My Lord, we submit that there is need for the Applicant to present a surveyor's report in Court indicating whether or not he occupies part of the suit land in the face of denial by the Respondents that he (plaintiff/Applicant) occupies the land. Such a report will guide the Court in making a fair determination of the instant application. If it is found that the plaintiff/Applicant indeed occupies a different land parcel, then the case against the Respondent shall be incompetent and this application would suffer the same fate. The Respondents have not at all infringed the Applicant's right of occupation/use of his parcel



and as such, the Applicant does not have any cause of action against them hence no prima facie case.”

11. I think that is a reasonable route to take in the circumstances.

12. Accordingly, I make the following orders:

1. The Land Registrar and County Surveyor Busia shall within 14 days from the date of which this order is served upon them by the parties visit the land NO Bunyala/Bulemia/2746 and file a report on whether Alexander Claver Wasike has a home on any portion of the said land and the size thereof.
2. The parties shall jointly meet the costs of that exercise.
3. The report to be filed on or before 20th November 2023 when this matter shall be mentioned for further directions.

BOAZ N. OLAO

JUDGE

3RD NOVEMBER 2023

RULING DATED, SIGNED AND DELIVERED ON THIS 3RD DAY OF NOVEMBER 2023 BY WAY OF ELECTRONIC MAIL.

BOAZ N. OLAO

JUDGE

3RD NOVEMBER 2023

