



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT HOMA BAY

ELC (O.S) NO. E001 OF 2021

ISAIAH OGWE APPLICANT

VERUS

DIRECTORATE OF CRIMINAL INVESTIGATIONS.....1ST RESPONDENT

ASSET RECOVERY AGENCY2ND RESPONDENT

THE LAND REGISTRAR, HOMA BAY3RD RESPONDENT

THE ATTORNEY GENERAL4TH RESPONDENT

RULING

1. By a Notice of Motion dated 22nd October 2021 commenced **under section 6, Order 1 rule 10, 45 rules 1,2 and 3 and Sections 3 A and 80 of Civil Procedure Act, Section 45,70,93 of the Succession Act and all other enabling provisions of the law** (the application herein), the applicant Isaiah Ogwe through the firm of Ogwe and Company Advocates is seeking the following orders;

a) Spent

b) **THAT** there be stay of the order imposing restriction on the applicant's land Parcel No's Kanyada/Kanyango/Kalanya/5125, East Kanyada/Kanyadier/203, Kanyada/Kotieno Katuma 'A'/2312 and 2113, Homa Bay/Kothidha/556 and Kanyada/Kotieno Katuma A/2406 and or any property of the applicant pending the hearing of the originating summons herein.

c) **THAT** the costs of this application be in the cause.

2. The application is based on grounds (a) to (b) stated on its face and a 39-paragraph supporting affidavit sworn on even date by the applicant and copies of certificates of official search, sale agreements, title deeds and approved plan, among other documents, annexed to the affidavit. Briefly, the applicant's complaint is that he acquired the suit properties namely **LR Nos. Kanyada/Kotieno Katuma A/2312 and 2313** measuring approximately Zero decimal zero nine hectares (0.09 Ha) in area in the year 2009 from Dancan Odemba, **LR No. Kanyada/Kotieno Katuma A/2406** measuring approximately zero decimal two six hectares (0.26 Ha) in area on or about 26th May 2014, **LR No. Kanyada/Kanyango/Kalaya/5125** measuring approximately zero decimal one three hectares (0.13 Ha) in area on or about August 2008 from Francis Tana Ager, **LR No. Kayada/Kanyadier/203** measuring approximately zero decimal three one hectares (0.31 Ha) in area, in the year 1995 from Michael Odira Ogire and **LR No. Homa-Bay/Kothidha/556** measuring approximately zero decimal two zero hectares (0.20 Ha) in area on the 6th day of July 2017 through purchase. That the consideration he used to acquire the suit properties was from legitimate sources which has not been questioned by any person and/or authority. That on 16th August 2019, the respondents caused restrictions to be registered against the suit properties without giving him fair and reasonable opportunity to explain himself before the 2nd Respondent. Thus, it precipitated this application.

3. The application was duly served on the respondents as shown in the affidavit of service sworn on 30th November 2021 by Isaiah Miruka, a duly authorized process server.

4. Be that as it may, the respondents failed to respond to the application.

5. The applicant's counsel filed submissions dated 30th November 2021 on even date further to this court's orders and directions of 26th October 2021 and Order 51 Rule 16 of the Civil Procedure Rules, 2010. Counsel urged the court to grant the orders sought in the application

and relied on **section 82 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA)** and the case of **Asset Recovery Agency- versus-Mike Sonko Mburu Gideon Kioko (2020) eKLR**, to buttress the submissions.

6. I have duly considered the application and the submissions in their entirety. In that regard, has the applicant made out his case to entitle him to the Orders sought in the application?

7. The applicant asserted that the restrictions were registered against the suit properties without any basis. That the same seems to remain as such indefinitely.

8. The applicant laments that he was not given any notice before the registration of the restrictions. That the said restrictions contravene **Articles 40, 47 and 50 of the Constitution of Kenya, 2010**.

9. It was the duty of the court to ensure that the respondents were served with the application. That they had the option to appear or decline to appear to defend the application; **See Ogada-versus Mollin (2009) eKLR 620**.

10. Indeed, the applicants were served as shown in paragraph 3 herein. They failed to react to the application without any reason.

11. This court is aware of **sections 82, Articles 40, 47 and 50** as well as **Assets Recovery Agency case (all supra)**. **Under Article 25 (c) of the Constitution of Kenya 2010**, the right to fair trial is unlimited and the parties have been given an opportunity to fair hearing of the application.

12. On that account, I find the application unopposed and steadfast. It has merit.

13. Accordingly, I proceed to grant Orders 2 and 3 sought in the application dated 22nd October 2021 and as set out at paragraph 1 (b) and (c) hereinabove.

14. In order to preserve the suit properties stated in paragraph 2 hereinabove and in the spirit of **section 13 (7)(a) of the Environment and Land Act, 2015 (2011)**, the applicant shall not subdivide, transfer, sell, charge or dispose of, in any manner, the suit properties pending the hearing and determination of this suit initiated by way of an originating summons dated 22nd October 2021.

15. It is so ordered.

Ruling delivered, dated and signed at Homa-Bay this 30th day of November 2021.

G.M.A ONG'ONDO

JUDGE

In the Presence of;

Mr. R. Ogwe, learned counsel for the applicant.

Court Assistant: Okello

G.M.A ONG'ONDO

JUDGE