



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. CASE NO. 39 OF 2021

REGINA ODERO PUNDO (Suing as the legal representative of the

Estate of Getrude Anyango Owiny deceased.....PLAINTIFF/APPLICANT

VERSUS

CHRISTINE ORIMBO.....1ST DEFENDANT/RESPONDENT

JOSEPH OPIYO OTUOMA.....2ND DEFENDANT/RESPONDENT

RULING

The plaintiff has come to this court against the Defendants seeking **an order restraining the Respondents, their servants, agents and/or representatives and any other third party from interfering with, trespassing and/or disposing off any part of the KISUMU/OJOLA/2061;KISUMU/OJOLA/2063;KISUMU/OJOLA/2096;KISUMU/OJOAL/3019;KISUMU/OJOLA/2525; KISUMU/KANYAWEGI/583 pending the hearing and determination of the suit. That the O.C.S Maseno Police Station ensures compliance of this order. Costs be provided for.**

The application is based on grounds that **the respondents have trespassed without any color of right into land parcels KISUMU/OJOLA/2061; KISUMU/OJOLA/2063; KISUMU/OJOLA/2096; KISUMU/OJOAL/3019; KISUMU/OJOLA/2525; KISUMU/KANYAWEGI/583 and are currently erecting structures on the said parcel to the detriment of the applicant and the estate of Getrude Anango Owiny (deceased).**

The applicant contends that the respondents have trespassed on the parcel and are busy constructing structures on it without permission from the legal administrator of the estate of the deceased. That the respondents continue to intimidate agents of the applicant with a view of keeping them away from the suit property so as to persists their acts of illegality without interference and that the suit properties are subject to ongoing succession proceedings being succession Cause No. 14 of 2019 at the High Court of Kenya at Kisumu and if they are not restrained the beneficiaries stand to lose or be adversely affected by the illegal acts.

That the respondents are intermeddling in the Estate of Getrude Anyango Owiny (deceased) to the detriment of the beneficiaries. The Respondent is threatening of disposing off the parcel thereon without the consent and authority of the applicants.

In supporting affidavit it is stated by Regina Odero Pundo that she is the executrix of the Estate of Getrude Anyango Owiny (deceased). That currently the estate of Getrude Anyango Owiny has ongoing succession proceedings in Succession Cause No. 14 of 2019 at the High Court of Kenya at Kisumu. That among the properties of the deceased are Kisumu/Ojola/2061; Kisumu/Ojola/2063; Kisumu/Ojola/2096; Kisumu/Ojoal/3019; Kisumu/Ojola/2525; Kisumu/Kanyawegi/583.

On the 18th day of June, she received reports from their caretakers that the Respondents, through their agents had trespassed into the suit properties and started erecting poles with a view of establishing more permanent structures/buildings. On inquiring from these trespassers, they asserted that some of them had been sent by the Respondents to enter into the land and construct buildings and that the said parcel was under their ownership.

On inquiring as to whether they had any documentation to prove ownership, they failed to provide them. Despite cautioning the trespassers of the fact that they are intermeddling in the estate of the deceased they continued erecting structures namely, pole for the purpose of fencing and securing the said parcels for their ill motive purposes.

A report was made at the police station at Maseno under OB15/19/06/2021 at 1448 hrs., alluding to the offence of trespass by Respondents. The applicant is now seeking an injunction against the Respondents restraining them from accessing the property or further intermeddling in

the estate of the deceased bearing in mind that succession proceedings are ongoing in Succession Cause No. 14 of 2019 at the High Court at Kisumu. That through her advocate the Respondents have already served with the Respondents with demand letters but they have ignored. It is in the interest of justice that this Honourable Court bar the respondents, jointly and severally, through their agents from accessing and further attempting to illegally alienate the aforementioned parcels to the detriment of the estate of the deceased and the beneficiaries who stand to inherit.

The respondents on their part filed a replying affidavit sworn by Joseph Opiyo Otuoma who states that they are occupying three parcels of land namely Kisumu/Ojola/2061; Kisumu/Ojola/2063; Kisumu/Ojola/2096; and that they have been in occupation for a period of 40 years. That the parcels of land form part of their ancestral land which belonged to their grandfather the late Otiende Ogoni and are actively occupied by respondents with their various homesteads and have their crops to-date and that they graze thereon.

I have considered the application, supporting affidavit and the replying affidavit and do find that the respondents are in possession of the suit properties and that the plaintiff is ultimately seeking for their eviction from the said properties and damages for trespass. The respondents having resided on the suit properties for a long period of time, an order of injunction cannot be granted as the same will amount to an eviction. Moreover, the plaintiff can be compensated by way of damages for trespass if the court finds that the respondents have trespassed on the plaintiff's land. I do decline to grant the orders sought. Costs in the cause. Orders accordingly.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 26th DAY OF NOVEMBER, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

ANTONY OMBWAYO

JUDGE