



REPUBLIC OF KENYA



KENYA LAW
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Obiero v Dache & 4 others; Omondi & 2 others (Interested Parties) (Land Case E033 of 2025) [2025] KEELC 4921 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4921 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
LAND CASE E033 OF 2025**

**E ASATI, J
JUNE 30, 2025**

BETWEEN

PAMELA AKINYI OBIERO PLAINTIFF

AND

JAPETH OWAK DACHE 1ST DEFENDANT

WILFRED OMONDI ODODA 2ND DEFENDANT

LAND REGISTRAR, KISUMU 3RD DEFENDANT

DIRECTOR OF SURVEY, KISUMU 4TH DEFENDANT

HON ATTORNEY GENERAL 5TH DEFENDANT

AND

LEONARD OMONDI INTERESTED PARTY

JOSEPH OMAMO MBAJA INTERESTED PARTY

LUCAS OUMA OBANDA INTERESTED PARTY

RULING

1. This ruling is in respect of the Notice of Motion application dated 9th May, 2025 seeking for orders that;
2.
 - a. Pending the hearing and outcome of the main suit, the Defendants jointly and severally be barred from the current status of all that parcels of land known as LR Kisumu /kapuonja/2934 and LR Kisumu/kapuonja/3312.



- b. This order be served upon the Respondent by the area Assistant Chief, the OCS, Dago police station to ensuring compliance.
 - c. Costs of the application be in the cause.
3. The rest of the prayers in the application sought for interim relief pending the hearing and determination of the application.
 4. The grounds upon which the application was brought are that the Applicant is the registered owner of the suit lands. That the Respondents have connived to defeat his title by reverting LR Kisumu / kapuonja/3316 to Lr Kisumu /kapuonja/2934 without their consent, notice or knowledge, that the Respondents armed with a court order visited the Applicant's home on 22nd April, 2025 and annexed the Applicant's house to the home of the 2nd Defendant. That the 3rd Defendant cancelled the Applicant's titles.
 5. The application was supported by the Supporting Affidavit sworn by the Applicant on 9th May, 2025 and the annexures thereto.
 6. The application was opposed vide the contents of the Replying Affidavit sworn by Wilfred Omondi Ododa, the 2nd Defendant. The Respondents' case is that there have been various court cases regarding the subject matter namely; Kisumu Cmcc No.605 of 2014, Kisumu Elc Appeal No.065 Of 2024, Kisumu Elc No354 Of 2014 And Kisumu Cm Elc No.114 Of 2022.
 7. That the current suit is res judicata the completed Kisumu CMCC NO.605/2014 and sub-judice the pending cases.
 8. That the 3rd and 4th Defendants herein were merely executing the judgement in Kisumu CM CC NO.605 of 2014 for which there is no order of stay of execution.
 9. The application was heard orally on 22nd May, 2025. It was submitted on behalf of the Applicant that the Plaintiff had come to court to protect her title to the land which was cancelled by the 3rd Defendant.
 10. That the Applicant was not allowed to participate in the proceedings in the case No.605 of 2014 where she was only an Interested Party. That stay orders had not been obtained in the appeal No. E065 of 2024 arising from the case No.605 of 2014 – because the Applicant withdrew the application for stay of execution.
 11. On behalf of the Respondent, it was submitted that the Application does not meet the threshold in Giella -vs- Cassman Brown case. That no prima facie case had been demonstrated. That the Defendants are only executing the judgement in case No.605 of 2014; that no irreparable harm has been pleaded or demonstrated and that the balance of convenience tilts in favour of the Defendants who have a judgement in their favour.
 12. I have considered the application against the grounds for grant of an order of temporary injunction as provided for in Order 40 Rule 1 of the Civil Procedure Rules.
 13. The Applicant has not denied the existence of denied the existence of other court cases on the same subject matter wherein she is party.
 14. She has not denied that the action of the Defendants were in execution of a judgement obtained in case No.605 of 2014 in respect of which she has an appeal pending.



15. No reason has been given why the present relief was not sought in any of the existing suit or in the appeal. In *Muchanga Investments Limited vs. Safaris Unlimited (Africa) Ltd & 2 Others* Civil Appeal No. 25 of 2002 [2009] KLR 229, the Court of Appeal held that:

“The term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding, which is wanting in bona fides and is frivolous, vexatious or oppressive. The term abuse of process has an element of malice in it...The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. Its one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice. Examples of the abuse of the judicial process are: -

- i. Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.
 - ii. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.
 - iii. Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a respondent’s notice.
 - iv. Where there is no iota of law supporting a Court process or where it is premised on frivolity or recklessness.
18. The court finds that the Plaintiff actions of inter alia filing a multiplicity of suits and seeking injunctive orders in this suit to restrain execution of a decree in another suit amount to abuse of the court process.
19. The application lacks merit and is hereby dismissed. Costs to the 2nd Respondent.
20. Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 30TH DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Nanungi for the Plaintiff/Applicant.

Odeny for the 2nd Defendant/Respondent.

Kwaro for the 1st Defendant/Respondent.

