



Tiony & 2 others v Barngetuny (Sued in his capacity as the administrator of the Estate of Tabarngoror Kobot Rongoei - Deceased) (Land Case (Originating Summons) E009 of 2024) [2025] KEELC 64 (KLR) (22 January 2025) (Ruling)

Neutral citation: [2025] KEELC 64 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
LAND CASE (ORIGINATING SUMMONS) E009 OF 2024
GMA ONGONDO, J
JANUARY 22, 2025**

BETWEEN

**DANIEL KIPLAGAT TIONY 1ST APPLICANT
MUSA SIMATU KIPKERIR 2ND APPLICANT
ISAAC KIPTUM KARONEI 3RD APPLICANT**

AND

EZEKIEL ROTICH BARNGETUNY (SUED IN HIS CAPACITY AS THE ADMINISTRATOR OF THE ESTATE OF TABARNGOROR KOBOT RONGOEI - DECEASED) RESPONDENT

RULING

1. This ruling is in respect of an application by way of a Notice of Motion dated 28th October 2024 originated pursuant to, inter alia, Order 40 Rules 1 and 2 of the Civil Procedure Rules 2010 by the three applicants through Mutta Advocates LLP for;
 - a. This Honourable Court be pleased to issue temporary orders restraining the Respondent, his servants, agents, relatives and/or assigns from anyway sub-dividing, partitioning and surveying land parcel No. Nandi/Kamoiywo/246 (the suit land herein) pending hearing and determination of the main suit herein.
 - b. The status quo prior to filing this matter be maintained pending hearing and determination of the main suit herein
 - c. Costs of this application be provided for.
2. The application is premised upon grounds (a) to (f) set out its face and the supporting affidavit of thirteen paragraphs sworn by the 3rd Applicant, Isaac Kiptum Karonei and the copies of certificate



of official search annexed to the affidavit. Briefly, the Applicants allege that that they are in actual possession of 3.5 acres of the suit land registered in the name of the Respondent who is in planning to conducting survey so as to sub divide and partition it with a view to evicting the applicants therefrom hence, they are likely to suffer harm thereby.

3. The respondent was duly served as disclosed in, among others, affidavit of service sworn on 4th December 2024 by an authorised process server, Robinson O. Getenga and the proceedings of 9th December 2024. Besides, there is no response to the application.
4. In that regard, is the application merited?
5. The applicants have sought interim preservation orders herein.
6. This court is guided by Order 40 (supra) and not unaware of temporary injunctive requirements.
7. It is well settled that status quo order is meant to preserve the suit property pending the outcome of the matter; see *Ogada-vs-Mollin (2009) KLR 620*.
8. Further, this court has the mandate to grant interim preservation orders including the orders sought in the application as provided for under section 13 (7) (a) of the Environment and Land Court 2015 (2011).
9. In the end, I find the application steadfast and meritorious. The same is hereby allowed in terms of 3rd and 4th prayers sought therein and as set out in paragraph 1 (a) and (b) hereinabove but costs be in the cause.
10. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 22ND DAY OF JANUARY, 2025.

GEORGE M A ONGONDO

JUDGE

Present;

Tallam D Learned Counsel for the Applicants

Walter, Court Assistant

