



Ondu v Ondu (Environmental and Land Originating Summons E017 of 2020) [2025] KEELC 6255 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6255 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2020

E ASATI, J

SEPTEMBER 25, 2025

IN THE MATTER OF REGISTERED LAND ACT CAP 300 (REPEALED)

AND

IN THE MATTER OF LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF SECTION 7,17 AND 38 OF

THE LIMITATION OF ACTIONS ACT CAP 22

AND

IN THE MATTER OF LAND PARCEL NUMBER KISUMU/BLOCK 4/296

IN THE MATTER OF SILAS OKAL ONDU AND MARY AUMA ONDU

IN THE MATTER OF ORDER 37 RULE 7 OF THE CIVIL PROCEDURE RULES

BETWEEN

SILAS OKAL ONDU PLAINTIFF

AND

MARY AUMA ONDU DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion Application dated 11th February, 2025 expressed to have been brought pursuant to the provisions of sections 1A, 1B, 3, 3A of the *Civil Procedure Act* and Orders 40 and 42 Rule 6(1) of the Civil Procedure Rules.



2. The application seeks for an order that pending the hearing and final determination of the appeal by the Applicant to the Court of Appeal against the entire judgement delivered herein on 6th February, 2025, there be an order of injunction restraining the Respondent of her own, her agents, servants and/or employees from trespassing onto, developing, alienating, disposing of, or in any other way whatsoever interfering with the Applicant's quiet and peaceful possession, occupation and use of the suit property herein designated as KISUMU BLOCK 4/296. The application also seeks that the costs of the application be provided for.
3. The grounds upon which the application is brought are that the Applicant has filed a Notice of Appeal to the Court of Appeal having been aggrieved by the entire judgement of the court delivered on 6th February, 2025 and has additionally formally requested for the certified copies of the proceedings and the judgement to facilitate the expeditious processing of the appeal. That the appeal has real and overwhelming chances of success. That the appeal shall be rendered nugatory if the application is not allowed and execution proceeds according to the judgement. That the Respondent has threatened to move into the suit property and kick out the Applicant to the Applicant's utter detriment, an act that shall render the appeal nugatory. That the Applicant shall be exposed to unfair and unwarranted inconvenience, difficult and consequences in the event that the application is not allowed.
4. That it is only fair that the Applicant be permitted to exhaust his constitutional rights to recourse to justice as by law provided without any form or nature of frustration of his rights and interest.
5. The application was supported by the contents of the Supporting Affidavit sworn by the Applicant on 11th February, 2025 and the annexures thereto.
6. The application was opposed vide the contents of the Replying Affidavit sworn by the Respondent on 24th February, 2025.
7. The Respondent's case is that the Applicant does not reside on the suit land but at Makasembo estate. That she (Respondent) is the one who developed the suit property using her own money.
8. That she has no intentions of disposing off of the suit property and that even if it was her intention, it is her prerogative as the registered owner to do as she pleases with the property. That the Applicant is not a tenant in the suit property.
9. That the application is meant to deny her of her rightful use of the property and in particular, collection of rental income from the premises which rent the Applicant has been enjoying monopoly over despite knowing that the Respondent is the registered owner of the suit property. That the Applicant has come to court with unclean hands claiming that he lives on the suit property and is at risk of being evicted, when that is not the case. That the court had already made a finding in the judgement that the Applicant has never been in possession of the suit land. That since the judgement of the court was in the negative, the same is incapable of being stayed.
10. That being the registered owner of the land, the Applicant cannot trespass on the same.
11. Pursuant to directions given on 26th February, 2025, the application was heard by way of written submissions.
No written submissions were filed on behalf of the Applicant.
12. On behalf of the Respondent, it was submitted vide the written submissions dated 1st April, 2025 filed by the firm of Otieno, Yogo, Ojuro & Co Advocates that the application as filed is fatally defective in that the Applicant is seeking orders to prevent trespass and interference with his peaceful possession and occupation when he neither possesses nor occupies the suit land.



13. Counsel relied on the case of Patricia Njeri & 3 Others -vs- National Museums of Kenya [2004]eKLR and the case of Giella -vs- Casman Brown [1993]EA 358 and Mrao Limited -vs- First American Bank of Kenya & 2 Others [2003]eKLR to demonstrate that the grounds for grant of the relief sought had not been proved.
14. Counsel submitted further that the Respondent being the registered owner of the suit land intends to re-assert her ownership rights which include collecting rental income from the premises and that she does not intend to dispose of the same. That the intended appeal will not be rendered nugatory as the suit land will still be in existence even at the determination of the appeal.
15. Counsel relied on the case of George Gathuru Karanja -vs- George Gathuru Thuo & 2 Others [2019]eKLR where the Court of Appeal held inter alia that;

“whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is irreversible, or if it is not reversible whether damages will reasonably compensate the aggrieved party”.
16. Relying on the case of Madhupaper International Limited -vs- Kerr [1985]KLR 840, Counsel submitted that granting the injunctive orders sought in the application would inflict greater hardship on the Defendant and urged the court to exercise its discretion and decline the application.
17. Counsel submitted that to prevent the Respondent from continuing with possession of the suit land and enjoying the rental income from the premises would amount to going against her proprietary rights as enshrined in *the Constitution*.
18. Counsel urged the court to dismiss the application with costs to the Respondent.
19. I have considered the application, the grounds raised in opposition thereto and the submissions made.
20. The substantive prayer sought is for a temporary injunction pending hearing and determination of the intended appeal to the Court of Appeal.
21. This court did find in the judgement that the Applicant does not reside on the suit land. It will therefore be contradictory if the court were to find herein that the Applicant is entitled to the interim orders of injunction to restrain his removal/eviction from the land, pending the determination of the appeal to the Court of Appeal.
22. However, given that the Respondent has averred that she has no intention of disposing of of the suit land, it is my considered view that no prejudice will be suffered if the Respondent is restrained from disposing of or alienating the suit land pending hearing and determination of the appeal.
23. The Applicant has demonstrated that he has started the process of filing the appeal. He has exhibited to the court the Notice of Appeal and application for certified copies of the proceedings and judgement to enable expedite the process.
24. I find that the application has merit and hereby allow it as follows: -
25.
 - a. An order of temporary injunction restraining the Respondent from disposing of or alienating the suit land is hereby granted pending hearing and determination of the appeal to the Court of Appeal.
 - b. Costs to the Respondent.



Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 25TH DAY OF SEPTEMBER, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

No appearance for the Applicant.

Odhiambo h/b for Yogo for the Respondent.

