



REPUBLIC OF KENYA



KENYA LAW
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Ojango (Suing for and on Behalf of the Estate of Dan Mwanga Ochango alias Dan Ojango - Deceased) v Indiazi & 3 others (Environment & Land Case E001 of 2025) [2025] KEELC 4487 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4487 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND CASE E001 OF 2025

E ASATI, J

JUNE 12, 2025

BETWEEN

MARCUS GURVEY OJANGO (SUING FOR AND ON BEHALF OF THE ESTATE OF DAN MWANGA OCHANGO ALIAS DAN OJANGO - DECEASED) PLAINTIFF

AND

RINA AYUMA INDIAZI 1ST DEFENDANT

BENJAMINE ISICHE OJANGO (SUED AS THE LEGAL REPRESENTATIVE OF LEONARD INDIAZI OJANGO - DECEASED) 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

LAND REGISTRAR, VIHIGA 4TH DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion application dated 7th March 2025 expressed to be brought pursuant to the provisions of sections 1A, 1B, 3, 3A *Civil Procedure Act*, Order 51 Rule 1 Civil Procedure Rules 2010 and articles 40 and 159 (2) (d) of *the Constitution* of Kenya 2010.
2. Prayers 1, 2, and 3 of the application are spent as they sought for interim relief pending hearing and determination of the application. The outstanding prayers are for;-
 - a. An order of stay of execution of the ruling and/or order of the Hon. J.A. Agonda issued on 30th January 2025 directing for the cancellation of title number W/Bunyore/ebusikhale/2333,2324, 2325 & 2326 respectively for reversion of the said titles to the late Leonard Indianzi Ojanga and all consequential orders.



- b. An order of injunction against the 1st and 2nd defendants, their relatives and/or all persons acting under their title, order direction or control from evicting or interfering with the peaceful use and occupation by the beneficiaries of the estate of the late Dan Mwangi Ochangio and the late Livingstone Isiche, selling, advertising for sale (enter by public auction or private treaty) transferring or in any way dealing with title to property title number West Bunyore/EbusikhalE/2333, 2324, 2325, and 2326 respectively.
 - c. The Respondents be condemned to bear costs of this application. The application was supported by the contents of the Supporting Affidavit of the Appellant and the annexure thereto.
3. The application was opposed vide the Replying Affidavit sworn by Benjamin Isiche Ojango, the 2nd Respondent, on 28th March 2025. The Respondents' case is that the plaintiff had instituted Vihiga Succ Cause No. E032 of 2021 secretly with the intention of disinheriting the rightful beneficiaries of the estate of the deceased. That the Court made a ruling on 17/5/2024 in favour of the Respondents and that the plaintiff did not appeal against the said ruling.
 4. That the 1st and 2nd Respondents are not yet confirmed as Administrators of the estate of the deceased and cannot therefore be sued as representatives of the estate. That the applicant approached the court with soiled hands. That the suit is time barred, That the applicant has no stake in the estate of the late Leonard Indiazzi Ojango.
 5. The substantive reliefs sought is for orders of stay of execution and temporary injunction.
 6. From the reading of the application and the plaint, the applicant's complaint is primarily based on orders issued by the Magistrate's court in Vihiga Succ Cause No. E032 of 2021: In the matter of the estate of Leonard Indiazzi Ojango. It has not been explained why the order of stay of execution was not sought in the same cause where the impugned orders were issued. The matter before this court is not an appeal from the Cause in which the said orders were issued.
 7. Regarding the prayer for a temporary injunction, Order 40 Rule 1 of the Civil Procedure Rules pursuant to which the application is brought provides that in order for an order of temporary injunction to issue it must be proved that the property in dispute is in danger of being wasted, damaged or alienated or of being wrongly sold in execution of a decree. None of these grounds have been demonstrated. The actions from which the applicant seeks to restrain the Respondents appear to be actions pursuant to the court orders in the succession cause. Such actions cannot be said to be unlawful until the said orders are set aside either through review, appeal or other lawful avenue.
 8. The court finds that it has not been demonstrated that the applicant has a prima facie case with a probability of success or that the applicant will suffer irreparable injury if the orders sought are not granted as held in *Giella vs Cassman Brown Co. Ltd* (1973) 358.
 9. The application is therefore hereby declined. Costs to the Respondent.
- Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 12TH DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

**E. ASATI,
JUDGE.**

In the presence of:



Ajevi: Court Assistant.

Odunga for the Plaintiff/Applicant.

Lumallas for the Defendants/Respondents.

N/A for the 3rd and 4th Defendants/Respondents.

