



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Ominde v Lubonga & 2 others (Environment and Land Case
E011 of 2025) [2025] KEELC 7388 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7388 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND CASE E011 OF 2025
EC CHERONO, J
OCTOBER 30, 2025**

BETWEEN

GEORGE ALINDA OMINDE APPLICANT

AND

PETER KISEMBE LUBONGA 1ST RESPONDENT

FAULU MICROFINANCE BANK LIMITED 2ND RESPONDENT

TIMELESS DOLPHIN AUCTIONEERS 3RD RESPONDENT

RULING

1. Vide a Notice of Motion application under certificate of urgency dated 26th April 2025, the Applicant herein is seeking the following orders;
 1. (Spent)
 2. That the honourable court be pleased to issue an injunction order to temporarily restrain the 1st, 2nd and 3rd Respondents by themselves, their agents and/or servants from executing the notice of sale of immovable property belonging to the applicant and to further restrain any person who has any interests to the suit property both 1st, 2nd and 3rd Respondents from transferring, selling, alienating and or subdividing and all dealing with the land parcel NO. BUNGOMA/KAMAKOIWA/4338 Malik area off Kakamega-Kitale road in Bungoma County pending hearing and determination of this Application and or the suit.
 3. That the honourable Court be pleased to award costs of this Application to be borne by the 1st and 2nd Respondents jointly.
2. The application is supported by the affidavit of the Applicant and six grounds apparent on the face of the said application sworn and dated on even date. The six grounds on the face of the application are as follows;



- i. That the 1st, 2nd and 3rd Respondents are aware that the land is fully occupied and partly lawfully purchased by the Applicant.
 - ii. That, the 1st, 2nd and 3rd Respondents are also aware that the suit property is extensively developed with houses and other structures including farming and livestock keeping.
 - iii. That the Applicant lawfully purchased part of the suit property at Kshs. 110,000/ (one hundred and ten thousand) and later extended another portion at Kshs. 18,000/ by paying a total of Kshs.128,000/ which is for 0.11 acres out of the suit land.
 - iv. That it is anchored under Article 40 (1-6) of the Constitution 2010 that the Applicant has a right to own land in Kenya anywhere.
 - v. That this court will uphold the Rule of law by allowing this Application instant and No one will suffer prejudice if the same is allowed.
 - vi. That it will be for the interest of justice that the court do grant the orders sought herein and or preserve the suit property by the status quo orders.
3. In his supporting affidavit, the Applicant reiterated the averments contained in the grounds on the face thereof and stated as follows;
1. That on 17;12;2016 and 5;10;2021 I purchased a parcel of land from the 1st Defendant of Kshs. 110,000/ and Kshs. 18,000/ which amount of money was paid in full in front of witnesses including the area chief and Auxiliary Chief and there is no any balance pending as at the time I am swearing this affidavit.
 2. That from the inception of purchasing the stated land I have indeed been enjoying quiet possession of the same to date. I annex the sale agreements marked “ G.AO 1”.
 3. That recently I intercepted with the surveyors and the 2nd Defendant together with the 3rd Defendant who had come to survey the land described as Bungoma/Kamakoiwa/4338 which I do occupy and had come with him a schedule of immovable property and the Auctioneers letter of NOTIFICATION OF SALE which I annex herewith marked “ GAO 3”and “G.A.O 4” respectively.
 4. That the 2nd and the 1st Defendants are very much aware of my existence on the land and the 1st Defendant decided to secure a loan from the 2nd Defendant without my consent and my involvement into the process.
 5. That the 1st Defendant decided to use the title deed of the land when he was supposed to transfer my portion of land to me and this was a trick to deny me my right of ownership and the 2nd Defendant was also aware decided to collude with the 1st Defendant.
 6. That it is quite clear that the date of the portion of the land I bought and the date the 1st Defendant took a loan clearly show that a loan was taken when I had already bought it and while in occupation.
 7. That this Court is a Court of justice and law and cannot allow or condone any acts of lawlessness as demonstrated in this matter.
 8. That the 1st Defendant has since sold his homestead and the 2nd Defendant should therefore proceed and recover the money borrowed from the 1st Defendant through the proceeds of



his occupied land and the 2nd Defendant was approving the loan while the land had an encumbrance as I was already on the land.

9. That I have heavily developed my land occupied as there are houses, livestock keeping and many other horticultural products. I annex some photos marked "G.A.O 5".
 10. That the 1st Defendant has not denied having sold the land I occupy to me and I am not a party to the illegal transactions entered by the 1st and 2nd Defendants made in bad faith.
 11. That the 3rd Defendant should be restrained by this court from executing the Notification of sale of the property which is currently under dispute and when and until such a time the dispute will be resolved.
 12. That the court has the discretion to recall the title deed held as security by the 2nd Defendant as the process of holding it was fraudulent because I never participated.
 13. That this is a court of law and I have come to court with good and clean hands and I needed to be heard.
4. The 1st Respondent filed a Replying Affidavit in opposition to the said application sworn on 1st July 2025 and stated as follows;
1. That the Applicant's application is frivolous, vexatious and an abuse of the due process of law.
 2. That I sold the 0.11 acres to the Applicant herein when I had already secured a loan.
 3. That the secured land is different from the land I sold to the Applicant.
 4. That the Applicant was to facilitate for the transfer process and have the purchased parcel of land transferred to him which he has declined.
 5. That the loan I secured has been serviced and I am in the process of discharging the charge.
 6. That the Applicant herein should facilitate the transfer process of her portion of land he purchased.
5. The 2nd and 3rd Defendants/Respondents also opposed the application and filed a Replying affidavit sworn by one Fredrick Nyabuti advocate who deposed as follows;
1. That I am advised by my Advocates on record whose advise I verily believe to be true that the Application lacks merit and the same ought to be dismissed with costs.
 2. That the 1st Defendant, Peter Kisembe Lubonga is the registered proprietor of the suit property known as TITLE NO. BUNGOMA/KAMAKOIWA/4338 as evidenced by the Title Deed for the subject property which he lawfully surrendered to the 2nd Defendant as part security for issuance of a loan facility in the sum of Kshs.800,000/.
 3. That as such, the plaintiff/Applicant is a stranger to the 2nd Defendant/Applicant and the 2nd Defendant's knowledge and belief, has no nexus to the suit property.
 4. That the 2nd Defendant/Respondent, as a financial institution regulated by the Central Bank of Kenya, undertook the requisite due diligence exercises before registration of the charge instrument, including conducting an official search at the Lands' registry, inspection of the Title and a physical valuation of the suit property.
 5. That at the time of granting the loan facility, the Title to the suit property reflected no legal or equitable interest of any third party, including the Plaintiff/Applicant, and no encumbrance



or caution was noted on the register, and the 2nd Defendant/Respondent proceeded to register the charge instrument against the suit property.

6. That the Plaintiff/Applicant's assertion that the 2nd Defendant/Respondent was required to obtain his consent prior to charging the property is not supported by any law, given that he has no equitable and/or registrable interest in the property and is not a party to the 1st Defendant/Respondent's Loan facility Agreement nor the charge instrument.
7. That the 1st Defendant/Respondent voluntarily offered the suit property as part security for the loan facility and upon the loan facility falling into arrears, the 2nd Defendant/Respondent was compelled to begin the process of exercising its statutory power of sale.
8. That in this regard, the 2nd Defendant/Respondent, duly served a Statutory 90-day Notice pursuant to section 90 of the Land Act (CAP. 280) of the Laws of Kenya requiring the 1st Defendant/Respondent to make settlement of the loan arrears. The 1st Defendant/Respondent did not comply with the same, and the 2nd Defendant/Respondent proceeded to issue a Statutory 40-day Notice under Section 96 of the said Act.
9. That, the 1st Defendant/Respondent again failed to repay the loan facility and the 2nd Defendant/Respondent gave instructions to Hillscape Valuers Limited dated 24th February 2025 to undertake a valuation exercise over the suit property and a valuation report was issued before the property was put up for sale by auction.
10. That accordingly, the 2nd Defendant/Respondent has procedurally and substantially complied with the law in the exercise of its statutory Power of Sale as conferred under Section 90-98 of the Land Act and Section 25(1) (a) of the Land Registration Act
11. That the 2nd Defendant/Respondent is not privy to the alleged Sale Agreement between the Plaintiff/Applicant and the 1st Defendant/Respondent and as such, is not binding on the 2nd Defendant/Respondent and it can nonetheless override the 2nd Defendant/Respondent's legal rights as a secured creditor.
12. That I have reviewed the Applicant's Sale Agreement titled "Memorandum of Sale Agreement" dated 17th December 2016 and marked as "Annexure G.A.O-1" of his supporting Affidavit, and I note that, the document does not make reference to or provide the particulars of the suit property under Sale and as such the Court cannot rely upon the same to establish any enforceable interest in respect of the suit property.
13. That the Plaintiff/Applicant has not produced any Title document or official documentation to demonstrate his ownership or occupation rights over the suit land and alleged mere possession, even if proved, cannot defeat the rights of a registered proprietor or a Chargee thereof.
14. That the 1st Defendant/Respondent's loan facility remains in substantial arrears totalling to Kshs. 890,447.74 as at 20th March, 2025.
15. That there is no credible or admissible evidence presented by the Plaintiff/Applicant to support the allegation that the land has been developed to the tune of Kshs. 5,000,000/-. This averment is speculative, unsupported by expert valuation or documentary proof, and is meant to invoke sympathy and delay lawful realisation of the 1st Defendant/Respondent's security.
16. That to the contrary, the professional valuation undertaken by Hillscape Valuers Limited on 25th February, 2025 placed the market sale value of the suit property at Kshs. 650,000/ and



it is therefore unclear what improvements or developments the Plaintiff/Applicant is making reference to in the tune of Kshs. 5,000,000/.

17. That the Plaintiff/Applicant's application is an abuse of the court process, brought in bad faith with the sole intention of curtailing and frustrating the 2nd Defendant/Respondent's lawful exercise of its statutory power of Sale.
18. That the balance of convenience tilts in favour of allowing the 2nd Defendant/Respondent to exercise its statutory power of sale and if there is any recourse due to the Applicant, then it is due by the 1st Defendant/Respondent which he is at liberty to pursue without involvement of the 2nd and 3rd Defendants/Respondents.

Legal Analysis And Decision

6. I have considered the application, the supporting affidavit, the Replying affidavit, the further/ Supplementary affidavit, the annexures to the affidavits, both in support and in opposition thereto, the rival submissions and the applicable law. What the Applicant is basically seeking in the current application is grant of an equitable order of injunction pending the hearing of the main suit.
7. It is trite that before an order of injunction is issued, the court must satisfy itself on the following three conditions;
 1. Whether the Applicant has demonstrated a prima facie case with a probability of success.
 2. Whether the applicant is likely to suffer irreparable harm which cannot be compensated by an award of damages and
 3. Where the balance of convenience tilts if the court is in doubt.
8. The existence of a prima facie case is a prerequisite in grant of an injunction order. Prima facie has been explained to mean a serious question to be tried in the suit and that should the temporary injunction not be granted at the interlocutory stage, the Applicant would suffer irreparable injury. The burden is usually on the plaintiff/Applicant to satisfy the court by leading evidence demonstrating that he has a prima facie case. It has also been argued that a prima facie does not mean a proved to the hilt, but one which can be said to be established if the evidence which is led in support were capable of being believed.
9. The plaintiff in this case argued that he bought a portion of the suit land measuring 0.11 acres from the 1st Defendant/Respondent at a consideration of Kshs. 128,000/.. He further averred that immediately after purchase, he was given possession and he started making extensive developments which include houses and other structures including farming and livestock keeping.
10. However, the suit property L.R NO. BUNGOMA/KAMAKOIWA/4338 indicates that a charge instrument dated 23rd October 2018 was duly registered against its proprietor, the 1st Defendant/ Respondent herein for a loan facility which together with interest stood at Kshs. 890,447.74 as at 20th March, 2025. Upon review of the Memorandum of Sale Agreement availed by the Plaintiff/Applicant does not indicate that the subject of the purported Sale between the plaintiff/Applicant and the 1st Defendant/Respondent is the suit property LR NO. BUNGOMA/KAMAKOIWA/4338. The said Memorandum of Sale Agreement lacks particulars of the land and therefore, incapable of creating or conferring any proprietary interest or equitable rights over the suit property.
11. I also note that the 1st Defendant/Respondent's proprietary interest in the subject property only came into being on 8th November 2018 when the property was conveyed to him by the Bungoma



Land Registrar. It follows therefore that in the year 2016, the 1st Defendant/Respondent had no legal capacity to sell or enter into a legally binding agreement to sale or transfer any interest in the suit property. The Defendant/Applicant stated that he bought the suit land long before the charge was created over the same. However, he has not produced a title document, official search, caution or restriction lodged against the register to demonstrate a legally recognizable interest. Section 24 & 25 of the [Land Registration Act](#) vests absolute ownership and rights in the registered proprietor and the rights of such proprietor are indefeasible subject only to the rights noted in the register and the Applicant has not shown any such registrable interests.

12. It is my view that since the Plaintiff/Applicant is not a registered proprietor of the suit property, his contractual claims cannot override the 2nd Defendant/Respondent's registered charge. See the case of *Mbuthia v Jimba Credit Finance Corporation & Another* (1988) KECA 116 (KLR). In my view, the plaintiff/Applicant has failed to establish any legal or equitable right capable of protection by a court of equity.
13. As to whether the Applicant has established that he will suffer irreparable injury that cannot be compensated by an award of damages unless the injunction order is granted, my answer is in the negative. I say so because the Plaintiff/Applicant alleged improvements and developments on the suit land but failed to produce a valuation report or receipts to substantiate the allegations. On the other hand, the 2nd and 3rd Defendants/Respondents have produced a valuation report which provides guidance on the value of the suit property should it be determined that the Plaintiff/Applicant ought to be compensated should the charged property be sold in exercise of the 2nd Defendant/Respondent's exercise of her statutory power of Sale.
14. On whether the balance of convenience tilt in favour of the Plaintiff/Applicant, my answer is also negative. This is because the Plaintiff has failed to show a prima facie case. The 2nd Defendant/Respondent has demonstrated that the 1st Defendant/Respondent voluntarily and willingly offered the suit property as a collateral security for the loan facility which was duly charged and the 1st Defendant/Respondent has not denied. The 2nd Defendant/Respondent has stated that the 1st Defendant/Respondent has defaulted in his repayment of the loan which together with the arrears stand at Kshs.890, 447.74 as at 20/03/2025. These averments given on oath have not been controverted nor denied. On those reasons, I find that the balance of convenience tilts against granting the injunction orders as sought.
15. In view of the foregoing, I find the Notice of Motion application dated 26th April 2025 lacking in merit and the same is hereby dismissed with costs to the Defendants/Respondents.
16. It is so ordered.

READ, DELIVERED and SIGNED at BUNGOMA this 30th October, 2025

HON. E.C CHERONO

ELC JUDGE.

In the presence of;

Mr. Kaula H/B for M/S Muthoga for the 2nd and 3rd Respondents

Applicant-present.

1st Respondent-present

M/S Nalika C/A.

