



REPUBLIC OF KENYA



KENYA LAW
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**Olik v Apondi & another (Environment and Land Miscellaneous Application
E023 of 2025) [2025] KEELC 7910 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7910 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E023 OF 2025
AE DENA, J
NOVEMBER 13, 2025**

BETWEEN

SELA AUMA OLIK APPLICANT

AND

SUSAN OKETCH APONDI 1ST RESPONDENT

OWAGO DICKSON OWAKO 2ND RESPONDENT

RULING

1. This ruling is on the Notice of Motion Application dated 10/07/2025 seeking the following verbatim orders
 - a. Spent.
 - b. That upon joinder this honourable court be pleased to issue orders maintaining the status quo with respect to land parcel number North West Gem/Sirembe/1437 ELCMisc/E023/2025 and this application.
 - c. That pending the hearing and determination of ELCMisc/E023/2025 and of this application inter parties, this honourable court be pleased to issue a temporary injunction restraining the 2nd proposed respondent, whether by himself, his agent, servant, or any other person acting under his instructions, from evicting the applicant from land parcel North West Gem/SirembeR/1437, or demolishing any structure thereon.
 - d. That pending the hearing and determination of ELCMisc/E023/2025 and of this application inter parties, this honourable court be pleased to issue temporary orders of injunction restraining the 2nd respondent, either by himself, his servants, agents, or any other person acting under his instructions, from evicting the applicant or her husband Dicson Olik from land parcel number North West Gem/Sirembe/1437, demolishing and destroying any structures



and crops thereon, or otherwise interfering with their peaceful occupation and possession of the said parcel of land.

- e. That pending the hearing and determination ELCMISC/E023/2025 and of this application, this honourable court be pleased to issue a permanent injunction restraining the 2nd respondent, his agents, servants or assigns from trespassing upon or in any manner interfering with the applicant's quiet possession of land North West Gem/Sirembe/1437.
 - f. That this honourable court be pleased to order mesne profits, costs and interest as may be just.
 - g. That the Officer Commanding Station (OCS), Sirembe Police Station, be directed to ensure compliance with any orders that may be issued by this Honourable Court.
 - h. That the costs of this application be provided for
2. The application is supported by the Affidavit of Sela Auma Olik. It is deponed as follows; -
 3. That the original owner of the suit property was Joram Olweny (deceased). On or about 7th September 2008, the widow of the deceased, Margaret Wameyo, sold the suit property to the applicant for Kshs. 80,000, which was fully paid in cash. A copy of the sale agreement dated 7th September 2008 is annexed.
 4. That the sale agreement was in Luo language, executed in the presence of credible witnesses, including the 1st Respondent, and was acknowledged by both parties. A translation to English Language has been provided.
 5. That Margaret Wameyo, passed away without effecting the transfer of the property to the applicant purchaser and the 1st Respondent, being the only child of the deceased, filed succession cause and transferred the property to herself. She thereafter subdivided the land into three parcels: North West Gem/Sirembe/1437, 1438, and 1439.
 6. The applicant deponed that she has been in occupation of parcel 1437 for the last seventeen (17) years. That she have been involved in a pending boundary dispute with a neighbouring landowner, which she was awaiting resolution prior to initiating the formal transfer of the suit property into my name.
 7. The deponent states that on 3rd March 2025, she instructed her son, Tom Onono, to apply for a caution to be placed on the land but she discovered on 23rd June 2025 was never registered by the Siaya Land Registry. A copy of the Caution application is annexed.
 8. She further depones that during the pendency of the boundary dispute above the 1st Respondent unlawfully and without the applicants knowledge or consent sold and transferred land parcel number North West Gem/Sirembe/1437 to the 2nd Proposed Respondent on 19th May 2025. A copy of the Certificate of official Search is annexed.
 9. The deponent states that despite occupying, farming and developing the land for over 17 years, the 2nd Proposed Respondent failed to carry out due diligence and is threatening her through the police with eviction and demolition of her structures and destruction of her crops. That the Proposed 2nd Respondent had also threatened and engaged the police in an attempt to forcibly evict the applicants elderly husband, Dishon Olik who is not even a party these proceedings or to the sale agreement executed on 7th September 2008, and has merely been farming on the property while the applicant was working in Nairobi. Photos of sorghum crop on the subject parcel is annexed.
 10. According to the deponent the threatened actions are not only unlawful but also pose a risk to the health and dignity of her elderly husband. She states the joinder of the 2nd Proposed Respondent is



essential, as he is a necessary party to the suit and any orders of this Court will directly affect and bind him in the ultimate interest of justice for all the parties herein.

11. That the applicants son, Tom Onono, has engaged the 2nd Proposed Respondent through WhatsApp communications regarding the dispute over land parcel number North West Gem/Sirembe/1437. That unless the Court intervenes, she stands to suffer irreparable harm, and her only source of livelihood will be destroyed and her rights, husbands and family rights and dignity will be infringed upon by the proposed 2nd Respondent's forceful eviction attempts.
12. It is stated the application has been made in good faith and without delay, and no prejudice will be suffered by any party if the orders sought are granted.

Replying Affidavit

13. The application is opposed by the replying affidavit of Owago Dickson Owako sworn on 18/08/2025. He states property described as North West Gem Sirembe/1437 is unknown to him neither does he own property in Sirembe area. That the particulars of his property is North Gem /Sirembe1437 which he acquired from Susan Apondi Oketch who was the registered owner. A copy of title deed is annexed.
14. The deponent further avers that he entered into agreements with Susan who gave him a confirmed grant a requirement for the transfer of the land to him by the land registry. Copies of the agreements are annexed. He got the title after complying with all the requirements. He annexed copy of title deed.
15. That the application as presented does not meet the test for grant of injunctive relief against the respondent and urges for its dismissal.

Further Affidavit

16. The applicant responded by her further affidavit sworn on 25/08/2025 reiterating that there is no other property in dispute except the suit property herein and all the parties were aware of this. She also introduces the issue of constructive trust.

Submissions

17. Application was heard by way of written submissions. The Respondents submissions are dated 15/10/2025 and the plaintiffs 15/10/2025. I have put the same into consideration in rendering this ruling.

Analysis and Determination

18. The main issue for determination in this application is whether the orders sought should issue.
19. The application is brought under the provisions of Articles 48, 50(1) and 159(2) of *the Constitution* of Kenya 2010, Sections 1A, 3A and 63 (e) of the *Civil Procedure Act* CAP 21, Order 1 Rule 3,10 (2) and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law)
20. Prayer a) sought the joinder of one Owago Dickson Owako the 2nd respondent herein which I granted on 15/07/2025 under the provisions of Order 1 Rule 1 of the Civil Procedure above.
21. The plaintiff sought orders that the status quo be maintained pending the hearing and determination of the present application and the suit. It also seeks orders of injunction against the 2nd respondent together with his agents from evicting the applicant and her husband who currently reside in the suit property. There is also a prayer for orders for temporary injunction.



22. The law governing the granting of interlocutory injunction is set out under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010 which provides that: -

“Where in any suit it is proved by affidavit or otherwise—

- (a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders..”

23. The conditions for consideration in granting an injunction were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) E A 358, where the court expressed itself on the condition’s that a party must satisfy for the court to grant an interlocutory injunction as follows: -

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

24. For purposes of the orders of injunction it is contended that the applicant has not met the threshold for the grant of an order of injunction.

25. The applicant depones that she bought the suit property from the widow of its original owner Joram Olweny. She performed her part of the bargain by paying the full purchase price. However, the said widow died before she transferred the suit property to the applicant. The daughter of the deceased then subdivided the suit property into three portions North West Gem/Sirembe/1437,1438 and 1439. The applicant alleges she has been in occupation of 1437 for the last 17 years. I hear the applicant to be stating this is the portion that the widow of the deceased sold to her.

26. In addition to the foregoing she alleges the 1st respondent sold the said plot 1437 to the 2nd respondent who is now threatening to evict her and her spouse.

27. What the applicant needed to demonstrate is her interest in the suit property. The applicant has presented copies of the alleged agreements between herself and the widow of the deceased. She has deponed the suit has not yet been transferred to her. She also annexed photos of a crop she planted on the piece of land. I think this is enough to show the applicants alleged beneficiary interest in the property.

28. The court is aware that at this point it should not get into the merits of the case for the reasons that the issue of ownership should be left to the hearing of the case when the same would be weighed against the scales of justice.

29. The 2nd respondent contends he is a stranger to the property described as North West Gem Sirembe/1437 since his parcel is North Gem /Sirembe/1437 which he acquired from the 1st defendant Susan



Apondi Oketch who was the registered owner. The applicant clarified in her further affidavit and reiterated that the description is erroneously stated but the suit property was the same.

30. The court is now faced with the dilemma of whether the suit property in occupation of the plaintiff is the same and which cannot be determined at this stage. However this court notes that on 16/10/2025 counsel for the 2nd defendant informed the court that his client had allowed the applicant to harvest the land. This prima facie points out to the fact that the suit property is the same otherwise how would the 2nd defendant grant access if he was not the one in control.
31. Moreover the 2nd defendant also holds title which is also prima facie evidence that he is the registered owner thereof. I have also made a finding that the applicant has demonstrated prima facie a beneficial interest in the suit property. What should the court do in the circumstances?
32. The court in the case of Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others [2015] eKLR cited with approval the dictum of Lord Diplock in American Cyanid Co.- v- Ethicon [1975] 1 All ER 504 at 511 where the court stated that where factors appear to be evenly balanced, it is a counsel of prudence to take such measures as are calculated to preserve the status quo.
33. At this stage of the dispute it would be paramount to protect and safeguard the interests of any person claiming a right over the land, the applicant and the 2nd defendant. This can be achieved by preserving the status quo both on the ground and the register. In this regard the court is persuaded with the guidance from the case of Thugi River Estate Limited & another Vs National Bank of Kenya Limited (supra) Justice Anguto (may his soul rest in peace) explained the circumstances under which orders for status quo may be issued as follows; -

“Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs. State of affairs however do not always remain static, so it is always crucial for the court to be very specific and neat in its description of what state of affairs is to be preserved.”

34. Applying the above to the present circumstances it is the view of this court that the status quo orders will suffice in this instance. The same will not only help in the preservation of the suit property but will also ensure that no party suffers any prejudice if the orders sought are granted.
35. An order of permanent injunction restraining the 2nd respondent, his agents, servants or assigns from trespassing upon or in any manner interfering with the applicant’s quiet possession of land North West Gem/Sirembe/1437 has also been sought. It is now trite orders of permanent injunction are orders in finality issued upon the determination of the rights of the parties. This entails a full hearing. Such orders cannot be issued at interlocutory stage because it will amount to determining the suit without hearing the parties fully on the merits of their respective claims to the suit property - see the case of Kenya Power & Lighting Ltd v Sheriff Molana Habib [2018]eKLR, where the court stated thus;

‘8. It is apparent from the pleadings that the Respondent was seeking a permanent injunction against disconnection of his electricity by the Appellant. A permanent injunction which is also



known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.’

36. Applying the above to the present case the prayer for permanent injunction must fail. The same fate shall befall the prayer for mesne profits as the same must be specifically be particularised and proved in a full hearing.
37. The following orders shall therefore issue to dispose of the application dated 10/7/2025
 - i. There will be an order of status quo to be maintained on property Known as North West Gem Sirembe/1437 and or North Gem /Sirembe/1437. For the avoidance of doubt the 2nd defendant shall not evict the Plaintiff/Applicant and her family from the said properties or demolishing any structure thereon pending the hearing and determination of this suit.
 - ii. An order is hereby made directed to the Land Registrar in charge of Gem/sirembe to be restrained from making any further entries in the proprietorship register for land parcel no’s North West Gem Sirembe/1437 and or North Gem /Sirembe/1437 and from any dealings whatsoever pending the hearing and determination of this suit.
 - iii. Costs shall abide the outcome of the main suit.

DELIVERED AND DATED AT SIAYA THIS 13TH DAY OF NOVEMBER 2025

HON. LADY JUSTICE A.E. DENA

JUDGE

13/11/2025

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Sunga Holding Brief Aladin for the Applicant

No appearance for Respondent

Court Assistant: Ishmael Orwa

