

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC LC E.057 OF 2025**

MARY ACHIENG OKELLO (Suing as the Administrator of the Estate of  
BLASTO OWINO OPAD .....PLAINTIFF/APPLICANT

VERSUS

BENJAMIN PETER OWINO .....1<sup>ST</sup> DEFENDANT/RESPONDENT

DAN HUDSON OWINO ..... 2<sup>ND</sup> DEFENDANT/RESPONDENT

JOHN AWUOR OWINO ..... ..3<sup>RD</sup> DEFENDANT/RESPONDENT

PAUL OWUOR ..... 4<sup>TH</sup> DEFENDANT/RESPONDENT

THE LAND REGISTRAR, AWASI ..... 5<sup>TH</sup> DEFENDANT/RESPONDENT

THE HON. ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT/RESPONDENT

**R U L I N G**

The Notice of Motion dated 4<sup>th</sup> September, 2025 brought pursuant to the provisions of Order 40 Rules 1(a), 2 & 3, Order 51 Rules 1 Civil Procedure Rules and sections 1A, 1B and 3A Civil Procedure Act seeks for an order of temporary injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants from interfering with the suit lands namely; KISUMU/JIMO EAST/1202 and KISUMU/JIMO EAST/103.

The grounds upon which the application is brought are that the Applicant is the lawful beneficiary of the suit parcels of land as the

same belong to her father-in-law. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant unlawfully caused the suit lands to be transferred to one DAN HUDSON OWINO and that the Defendants are threatening to establish permanent occupation of land parcel No.1202 as at 20<sup>th</sup> August, 2025.

The application was supported by the averments in the Supporting Affidavit of the Applicant.

It was submitted on behalf of the Applicant that the Applicant has a prima facie case, that the title held by the 2<sup>nd</sup> Defendant is challengeable as it was obtained on the basis of a revoked Grant Letters of Administration, that the Applicant will suffer irreparable loss if the order of injunction is not granted as the land is ancestral land with sentimental value to the Applicant.

That the balance of convenience tilts in favour of the Applicant because she has been occupying the land for a long time.

The application was opposed vide the contents of the Replying Affidavit sworn by John Owuor Owino on 2<sup>nd</sup> October, 2025. The Respondent deposed that there were no documents to show that the Applicant was legal representative of the late Blasto Owino Opado hence she lacks *locus standi*. That there is a succession cause No. KISUMU 913 of 2014 which was dismissed for failure to finalize the

process. That the land was reverted back to the name of the deceased.

That as a son of the deceased, the 3<sup>rd</sup> Respondent was ready to file succession cause in respect of the estate of the deceased and have the estate devolved to the rightful beneficiaries.

It was submitted on behalf of the Respondent that the issues in this court will be better solved through a succession cause. That a succession cause is already filed at Nyando court in respect of the estate of the deceased and the Plaintiff is a beneficiary.

That the orders sought are intended to bar the 1<sup>st</sup> to 4<sup>th</sup> Defendants who are sons of the registered owner from staying on the suit land which is their home.

I have considered the application. The Applicant has exhibited a Limited Grant of Letters of Administration Ad Litem dated 2<sup>nd</sup> September, 2025 empowering her to file suit on behalf of the estate of Blasto Owino Opado, deceased. She also exhibited certificate of official search for parcel No. KISUMU/JIMO EAST/1202 dated 19<sup>th</sup> June, 2025 showing that as at that date, the suit land was registered in the name of the deceased, a certificate of official search for parcel No. KISUMU/JIMO EAST/103 dated 15<sup>th</sup> July, 2025 showing that as at that date, the parcel was in the name of Owino Opado, deceased.

Another certificate of official search in respect of parcel No. KISUMU/JIMO EAST/103 also annexed to the application and dated 5<sup>th</sup> August, 2025 shows that the land was transmitted to the 2<sup>nd</sup> Defendant on 13<sup>th</sup> May, 2021 and parcel No. KISUMU/JIMO EAST/1202 to the same party on 27<sup>th</sup> July, 2020.

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants aver that they are sons of the deceased with their homes on the suit land.

The purpose of an order of temporary injunction is to preserve/protect the suit land from being wasted, destroyed or alienated pending hearing of the suit or further court orders. In Giella vs Cassman Brown Co. Ltd (1973) 358 grounds for issuance of an order of temporary injunction were laid down namely; that the Applicant must establish a *prima facie* case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience. A prima facie case was defined by the Court of Appeal in Mrao Ltd vs First American Bank Kenya Ltd & 2 Others [2003] eKLR as follows:

“ a prima facie case in a civil Application includes but is not confined to a genuine and arguable case. It is a case which on

the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

In the present case what is in contest is property of a deceased person which the applicant seeks to preserve pending determination of the rights of the parties to it. On the basis of the Limited Grant of Letters of Administration Ad Litem held by the Plaintiff, the court can act to give orders for the preservation of the estate. The Plaintiff brings the suit as administrator of the estate. She claims that the Respondents have threatened to dispose of the suit land and also alter the character of the land.

I find that the application has merit and hereby allow it in the following terms;

- a) An order of temporary injunction is hereby granted restraining the Defendants from disposing of, selling, charging, mortgaging, transferring or in any way alienating the suit land parcel Numbers KISUMU/JIMO EAST/1202 and 103 pending the hearing and determination of the suit or further orders of the court.
- b) Costs in the main suit.

Orders accordingly.

**Ruling dated and signed at Kisumu and delivered virtually  
this 18<sup>th</sup> December, 2025.**

**E. ASATI,  
JUDGE.**

In the presence of:

Maureen: Court Assistant.

Omondi T. for the Applicant

Kisaka for the 1<sup>st</sup> - 4<sup>th</sup> Respondents.