



**Ogalo (Suing as the administrator of the Estate of the Late Davis Ogalo Ogogo) v Aoko & another (Land Case E076 of 2025) [2026] KEELC 2692 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2692 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
LAND CASE E076 OF 2025**

**E ASATI, J  
MAY 7, 2026**

**BETWEEN**

**WYCLIFFE OKOTH OGALLO (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF THE LATE DAVIS OGALLO OGOGO) ..... PLAINTIFF**

**AND**

**HENRY OCHIENG AOKO ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, AWASI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 26<sup>th</sup> November, 2025 brought on behalf of the Plaintiff/Applicant pursuant to the provisions of sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* Cap 21 Laws of Kenya, Order 40 Rules 1, 2, 3, 4, 10 and Order 51 Rule 1 and 3 of the Civil Procedure Rules 2010, sections 68, 71, 72 and 73 of the *Land Registration Act* No.3 of 2012, sections 45, 79 and 82 of the *Law of Succession Act*, Cap 160 and Article 40(1) of *the Constitution* of Kenya 2010.
2. Prayers 1, 2, and 4 of the application are spent as they sought interim relief pending hearing and determination of the application. Only prayers 3, 5, and 6 thereof are pending determination.
3. The application was supported by the averments in the Supporting Affidavit sworn by the Plaintiff on 26<sup>th</sup> November, 2025, and the annexures thereto.
4. The case of the Plaintiff/ applicant is that he is the administrator of the estate of the late Davis Ogalo Ogogo, deceased, and the suit land parcel No. KISUMU/JIMO EAST/1285 is part of the estate of the deceased. That the 1<sup>st</sup> Respondent unlawfully lodged a caution against the suit land at Awasi Land Registry, thereby obstructing the lawful administration of the estate of the deceased.



5. That the 2<sup>nd</sup> Respondent, being the Land Registrar Awasi, registered the caution against the suit land without conducting the necessary due diligence or verification as required under Sections 71 to 73 of the *Land Registration Act*. That the continued existence of the caution has obstructed the lawful administration, subdivision, transfer, and distribution of the estate, resulting in irreparable loss and prejudice to the beneficiaries.
6. The Applicant therefore seeks that:-
  - a. Pending the hearing and determination of the main suit, the court be pleased to direct the 2<sup>nd</sup> Defendant/Respondent, the Land Registrar Awasi to forthwith place and/or maintain a restriction on any further dealings, entries, or transactions relating to land parcel No. KISUMU/JIMO EAST/1285 by an order of this court, for the purpose of preserving and protecting the subject property as part of the estate of the late Davis Ogalo Ogogo.
  - b. The honourable court do issue any further, consequential or preservatory orders as it may deem just, fair and necessary to ensure the absolute protection of the estate of the late Davis Ogalo Ogogo and to guarantee the preservation and integrity of the subject property, pending the final determination of the suit. Such orders are imperative to prevent any form of unlawful interference, dissipation, or prejudice to the state and its beneficiaries and to uphold the authority of the honourable court in safeguarding the administration of justice.
  - c. The costs of this application be in the cause.
7. The application was opposed by the 1<sup>st</sup> Respondent vide the averments in the Replying Affidavit sworn on 30<sup>th</sup> January, 2026. The case of the 1<sup>st</sup> Respondent is that his father bought a clearly identifiable portion of land parcel No. KISUMU/JIMO EAST/1211 for valuable consideration from one Lucas Otieno Bolo, who was a son of Pauline Omollo Kitoto, the owner of the land. That upon purchase, the 1<sup>st</sup> Defendant's father took possession of the portion and occupied the same openly, peacefully, and uninterruptedly.
8. That the Applicant's father, by the name Denis Ogalo Gogo, also purchased a different and distinct portion of the said land, and that his proprietary interest was limited to the portion he bought.
9. That the land parcel No. KISUMU/JIMO EAST/1211 was subsequently subdivided into 1285 and 1286, where 1285 is the portion of land jointly owned by the Applicant's late father and the 1<sup>st</sup> Defendant's late father.
10. That the Plaintiff's father caused himself to be fraudulently registered as the owner of the entire land parcel No. KISUMU/JIMO EAST/1285, but that the title was cancelled vide Nyando Misc. Case No.15 of 2007.
11. That the application is res judicata. That the orders sought by the Applicant are malicious, legally untenable, and calculated to obstruct the execution of a lawful court decree and to re-litigate matters conclusively determined by a competent court.
12. The application was heard orally on 18<sup>th</sup> February, 2026.
13. I have considered the application, the response thereto, and the oral submissions made. The first relief sought by the Applicant is an order directing the 2<sup>nd</sup> Defendant, that is the Land Registrar Awasi, to place and maintain a restriction on the suit land restricting any further dealings on the land pending hearing and determination of the suit.



15. Section 76 of the [Land Registration Act](#), which makes provision for restrictions provides as follows:-

- “(1) For the purposes of compulsory acquisition, the prevention of any fraud or improper dealings or for any other sufficient cause, the Registrar may either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such person as the Registrar considers fit, make an order (herein referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.
- (2) A restriction may be expressed to endure;
- (a) for particular period
- (b) until the occurrence of a particular event; or
- (c) until further order is made and any prohibit or restrict all dealing or only the dealing or only the dealings that do not comply with specified condition and the restrictions shall be registered in the register.
- (2A) A restrict shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions.
- (3) The Registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land lease of change is restricted.”

16. Section 77 provides as follows;

- “(1) The Registrar shall give notice in writing of a restriction to the proprietor affected by the restriction.
- (2) An instrument that is inconsistent with a restriction shall not be registered while the restriction is still registered except by order of the court or of the Registrar.”

17. From these provisions of the law, a restriction is an order made by the Land Registrar limiting certain dealings on land and is imposed administratively by the Land Registrar either on his/her own motion or on application by an Interested Party.

18. There is no evidence that the applicant moved the Land Registrar to place the restriction. However, both parties appear to be interested in preserving the status quo of the records in respect of the suit land pending the determination of their respective interests in the suit land. This is borne out by the fact that the 1<sup>st</sup> Defendant already lodged a caution on the land which the Plaintiff seeks to have removed. The 1<sup>st</sup> Defendant claims to be occupying part of the suit land.

19. In the circumstances, I consider it to be in the interest of justice that the restriction be placed on the register in respect of the suit land to prevent or restrict registration of any transaction/dealings on the suit land pending determination of the suit.



20. The next relief sought is an order from the court to preserve the suit property pending determination of the suit. However, in the court's view, the restriction to be placed by the Land Registrar is sufficient to preserve the suit property pending hearing of the suit.
21. I find that the application has merit and allow it as follows:-
- a. The 2<sup>nd</sup> Defendant (the Land Registrar Awasi) is hereby directed to forthwith place and maintain a restriction on the suit land parcel No.KISUMU/JIMO EAST/1285, restricting the registration of any dealings on the said land pending hearing and determination of the suit
  - b. Costs of the application shall be in the main suit.

Orders accordingly.

**RULING DATED AND SIGNED AT KISUMU, READ THIS 7<sup>TH</sup> DAY OF MAY, 2026, VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE**

In the presence of:

Atika: Court Assistant.

Mwamu for the Applicant.

Opiyo for the 1<sup>st</sup> Respondent.

No appearance for the 2<sup>nd</sup> Respondent

