



**Otieno v Okwako (Environment and Land Case 365 of 2013)
[2025] KEELC 7 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 7 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 365 OF 2013
DO OHUNGO, J
JANUARY 16, 2025**

BETWEEN

GEORGE JOSEPH OTIENO PLAINTIFF

AND

WAMALANDA OKWAKO DEFENDANT

RULING

1. Judgment was delivered in this matter on 16th May 2023 as follows:
 - a. A permanent injunction is hereby granted restraining the defendant, his agents and or servants from trespassing on, cultivating, occupying, alienating, cutting down trees or dealing in any manner with the parcel of land known as Marama/Shiatsala/1132.
 - b. The plaintiff shall have costs of the suit and interests thereon.
2. Subsequently, the Defendant filed Notice of Motion dated 15th June 2023, through which he sought orders that the firm of Achero Mufuayia & Company Advocates be allowed to come on record for him in place of the firm of Anyona & Company Advocates and that the judgment be set aside. The application was determined through ruling delivered on 29th April 2024. The new firm was allowed to come on record while the prayer for setting aside was dismissed.
3. On 26th April 2024, as the ruling was pending delivery, the Defendant filed Notice of Motion dated 25th April 2024. The application was drawn and filed on the Defendant's behalf by the firm of Anyona & Company Advocates. Through the application, the Defendant is seeking an injunction to restrain the Plaintiff, his agents, servants or anyone acting on his instructions from trespassing and encroaching into parcel number Marama/Shiatsala/1065 pending hearing and determination of the suit.



4. The application is supported by an affidavit sworn by the Defendant. He deposed that he is the registered proprietor of parcel number Marama/Shiatsala/1065 and that the Plaintiff had trespassed into the said parcel following delivery of the judgment.
5. The Plaintiff opposed the application through Notice of Preliminary Objection (PO) dated 24th May 2024 wherein he averred that the application was filed by a firm that was no longer on record and that there was non-compliance with Order 9 Rule 9 of the Civil Procedure Rules.
6. The application and the PO were canvassed together through written submissions. The Plaintiff filed submissions dated 25th September 2024. The Defendant did not file any, despite being given opportunities to do so.
7. I have considered the application, the PO and the submissions. A perusal of the record reveals that the firm of Anyona & Company Advocates was on record for the Defendant during the hearing of the suit and until the ruling of 29th April 2024. They were properly on record on 26th April 2024, when they filed the present application. The PO is without basis.
8. The Defendant is seeking an injunction pending hearing and determination of the suit. However, the suit was determined on 16th May 2023, in favour of the Plaintiff. I find no merit in the prayer for an injunction. The other prayers in the application are spent.
9. In the result, Notice of Motion dated 25th April 2024 and Notice of Preliminary Objection dated 24th May 2024 are without merit. I dismiss both. No order on costs.

DATED, SIGNED, AND DELIVERED THIS 16TH DAY OF JANUARY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Wandala for the plaintiff

No appearance for the defendant

Court Assistant: B Kerubo

