



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT KISUMU**  
**ELC CASE NO.187 OF 2015**

**JANE AJWALLA OGOLA.....1<sup>ST</sup>**  
**PLAINTIFF**

**PENINA JUMA ODERO .....2<sup>ND</sup>**  
**PLAINTIFF**

**(Suing as Administrators of the Estate of JAMES JUMA OGOLA**

**a.k.a JAMES OGOLA RUBEN) .....(deceased)**

**VERSUS**

**OKECH LEO alias LEONARD JABUNGU**  
**OHANO .....DEFENDANT**

**JUDGMENT**

1. **Jane Ajwalla Ogolla** and **Penina Juma Odera**, the 1st and 2nd Plaintiffs respectively, and suing as administrators of the estate of **James Juma Ogolla A.K.A. James Ogola Ruben**, filed their claim against **Okech Leo** alias **Leonard Jabungu Ohano**, the Defendant, praying for an order of permanent injunction restraining the Defendant from occupying, cultivating and or carrying out any activity on land parcel **Nyangoma adjudication section 3432**, mesne profits, costs and interests.

The Plaintiffs avers that the suit land is registered in the Nyangoma Adjudication register in the names of **James Gaunye Ogola**, now deceased. That in February 2015, the Defendant, in the company of other persons, trespassed onto the said land and hived off about half of the parcel by fencing it with euphoria plants, hence depriving the Plaintiffs of the use of that portion.

2. The hearing of this claim proceeded through formal proof as the Defendant did not enter appearance or file any defence. The interlocutory judgment was entered on 22nd September 2015 following the request for judgment vide Plaintiff's counsel's letter dated 18th September 2015.

3. The hearing commenced on 19th January 2016 when **Penina Juma Odera Gaunye**, the 2nd Plaintiff testified as PW1. She told the court that the suit land belonged to their deceased husband. She further testified that the Defendant had in February 2015, in the company of Ministry of Lands officers subdivided the land into two despite their objection. PW1 told the court that they raised a complaint with the Ministry of Lands Office and they were summoned under letter dated 21st April 2015 for a hearing. After failing to get a settlement, the Ministry official recommended that they seek legal action and hence this suit. The witness said they asked for a letter authorizing them to file this suit and were issued with the consent. They also applied for a grant ad litem and filed this suit. PW1 produced copy of the letter dated

21st April 2015, calling, them for a meeting on 6th May 2015, demand letter dated 14th May 2015 addressed to Defendant by their advocate, undated letter of consent to sue on land under adjudication, grant ad litem dated 22nd July 2015 and letter dated 22nd January 2016 from the Chief Land Adjudication and Settlement Officer, Bondo Subcounty confirming that **Bondo/Nyangoma/2432** is registered in the names of **James Ogola Ruben** (deceased) as exhibits 1 to 5 respectively.

4. The issue for determination are as follows:

- a) Who is the registered owner of parcel number 2432 in Bondo/Nyangoma adjudication section.
- b) Who between the Plaintiffs and Defendant have beneficial interests over the said land
- c) Whether the Plaintiffs are entitled to any orders sought and if so which ones should issue
- d) Who pays the costs.

5. The court has carefully considered the averments in the in the plaint dated 22nd July 2015 and the unconverted evidence of PW1 and come to the following conclusions:

a) That as confirmed by the Chief Land Adjudication and Settlement Officer, Bondo subcounty letter dated 20th January 2015, Land parcel 2432 is within the adjudication Section and is registered in the names of **James Ogola Ruben**, who is reportedly deceased.

b) That the said James Ogola Ruben died on 2nd February 2003 and the plaintiffs herein have obtained a grant ad litem dated 22nd July 2015 in **Kisumu H. C Probate No.659 of 2015** allowing them to file suit for the estate within 60 days.This suit was filed one day after the grant ad litem was issued.

c) That from the letter dated 21st April 2015 by Land Adjudication and Settlement officer, Bondo Subcounty addressed to **James Ogola Ruben** (deceased) husband to the Plaintiffs), Leonard Jabungu Ohano (Defendant) and others,there was a boundary dispute between parcels 2432 and 2430 which are associated with the parties herein. The plaintiffs indicated that the hearing did not come up with any settlement and they were advised to seek legal address and hence this suit. The plaintiffs, as required **under Section 30 of Land Adjudication Act, Chapter 284 and Section 8 of the Land Consolidation Act, Chapter 283 of the Laws of Kenya**, obtained the consent to sue on land that is under adjudication.The plaintiffs complaint is that the Defendant has encroached onto their parcel and fenced off half of it with euphoria plants

without their consent.They therefore pray for permanent injunction and as the Defendant has not offered any defence or challenged to their claim, the same should be granted. There was no materials presented to assist the court determine the acreage of the portion of the land fenced off by the Defendant or the amount of damages that would be suitable under the circumstances. The court is of the considered view that the order of permanent injunction will suffice at this stage considering entry onto the land was from February 2015 and has therefore lasted for slightly over over year.

6. That the court find that the Plaintiffs have proved their case against the Defendant on a balance of Probabilities.The court enters Judgment for the Plaintiffs against the Defendants as follows:

a) That an order of permanent injunction is hereby issued restraining the Defendant by himself, agents,servants and or howsoever from occupying, cultivating or trespassing onto land parcel **2432/Bondo/Nyangoma Adjudication Section** registered in the names of **James Ogola Ruben** (deceased).

b) The Defendant shall pay the plaintiffs costs of this suit.

It is so ordered.

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 13th DAY OF APRIL 2016**

In presence of;

Plaintiffs Present

Defendant Absent

Counsel Mr Odhiambo for Plaintiff

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**13/4/2016**

13/4/2016

S.M. Kibunja J

Plaintiffs present

Mr Odhiambo for Plaintiff

Court: Judgment delivered in open court in presence of Plaintiff and Mr Odhiambo for Plaintiff.

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**13/4/2016**