



**Odoro & 3 others v Akongo (Environment and Land Appeal  
E003 of 2023) [2024] KEELC 1462 (KLR) (18 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1462 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT AND LAND APPEAL E003 OF 2023  
GMA ONGONDO, J  
MARCH 18, 2024**

**BETWEEN**

**PIUS OWINO ODORO ..... 1<sup>ST</sup> APPELLANT  
JACOB OYUGI ODORO ..... 2<sup>ND</sup> APPELLANT  
FELIX OJWANDO ODORO ..... 3<sup>RD</sup> APPELLANT  
TERESA MBOYA ODORO ..... 4<sup>TH</sup> APPELLANT**

**AND**

**SAMWEL OPIYO AKONGO ..... RESPONDENT**

**RULING**

1. By a Notice of Motion application dated 4th August 2023, the four applicants through G. S. Okoth and Company Advocates are seeking the following orders;
  - a. Moot
  - b. Moot
  - c. The Honourable Court be pleased to issue an order of temporary injunction restraining the respondent from entering into, cultivating, erecting any building or in any other way dealing with Land Parcel No. Kabuoch/K-K Karita/570. (The suit land herein) or any portion thereof adverse to the interest of the applicants thereon pending the hearing and determination of the appeal.
  - d. The costs of this application be awarded to the appellants.
2. The gravamen of the application is the 1st applicant's supporting affidavit to the application and the annexed documents marked as "POO-1 to P00 5" being a copy of the trial court's decree and map, among others as well as grounds which include;



- a. By an order issued on the 29<sup>th</sup> March 2023 the original trial court reinstated the appellants on their rightful sections of the suit land which the appellants commence using by planting crops and erecting structures until sometime in July 2023 when the respondent and his family started encroaching into portions thereof and has continued encroaching further thereby destroying the appellants' properties thereon and prevented them from carrying on with cultivating their portions.
3. The respondent represented by learned counsel, Ochieng Madoro Khairalla, opposed the application by way of his replying affidavit sworn on 16th November 2023 and urged the court to dismiss the same with costs. He deposed, inter alia, that this appeal is far-fetched, lopsided, limbless, hollow and belated in all aspects. That there be a status quo in regard to the well-reasoned judgment of the trial court in the instant matter.
4. Hearing of the application was by way of written submissions pursuant to directions of the court given on 3rd October 2022.
5. By the applicants' submissions herein, their learned counsel implored the court to apply the conditions for grant of temporary injunction and allow the application accordingly. To buttress the submissions, reference was made to Order 42 Rule 6 (6) of the Civil Procedure Rules, 2010 and the case of Pius Kipchirchir Kogo-v-Frank Kimeli Tenai (2018) KLR, among others.
6. The respondent's submissions dated 18th January 2024, relate to the appeal. To a great extent, the respondent reiterates his averments in the replying affidavit in his submissions.
7. I have carefully considered the application, the replying affidavit and the rival submissions. Therefore, have the applicants made out their case to entitle them to the orders sought in the application?
8. Temporary injunction and temporary orders are provided for under Order 40 of the Civil Procedure Rules, 2010; see also Giella-v-Cassman Brown & Company Limited (1973) EA 358 and Nguruman Ltd-v-Jean Bonde Nielsen and other (2014) eKLR.
9. The applicants asserted that the respondent encroached into the suit land in use by the applicants. That the latter depend on the same for their livelihood.
10. Clearly, the memorandum of appeal dated 14th July 2023 contains issues including jurisdiction. The issues call for their hearing on merits in the instant appeal.
11. This court has the mandate under section 13 (7) (a) of the Environment and Land Court Act, 2015 (2011) to grant interim preservation orders over the suit land; see also Ogada-v-Mollin (2009) KLR 620.
12. So, the applicants are entitled to order to preserve the suit land, in the interim, as noted in section 13 (7) (a) and Ogada case (both *supra*) pending the hearing and determination of the appeal; This is targeted at meeting the ends of justice in this appeal.
13. To this end, the finding of this court is that this application is substantially merited.
14. Accordingly, the instant application is hereby allowed in terms of maintenance of status quo over the suit land as the decree (P002) is in favour of the respondent and the applicants are in use of the suit land but there be no eviction of the applicants from the same pending the hearing and determination of this appeal.
15. Costs to the application to abide the outcome of this appeal.



16. It is so ordered.

**DATED AND DELIVERED AT HOMA BAY THIS 18TH DAY OF MARCH 2024**

**G.M. A ONG'ONDO**

**JUDGE**

Present;

- a. P. Odhiambo instructed by G.S Okoth learned counsel for the applicants.
- b. L K Obwanda instructed by Ochieng Madoro Khairalla learned counsel for the respondent
- c. The respondent
- d. T. Luanga, court assistant

