



Okumu v District Land Registrar, Rachuonyo & 4 others (Civil Application E007 of 2024) [2024] KECA 302 (KLR) (19 March 2024) (Ruling)

Neutral citation: [2024] KECA 302 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E007 OF 2024
HA OMONDI, PM GACHOKA & HM OKWENGU, JJA
MARCH 19, 2024**

BETWEEN

DAMARIS AYOMO OKUMU APPLICANT

AND

THE DISTRICT LAND REGISTRAR, RACHUONYO 1ST RESPONDENT

THE SUB-COUNTY SURVEYOR, RACHUONYO 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

MOSES OTIENO OLOO 4TH RESPONDENT

EDITH AKUMU OTIENO 5TH RESPONDENT

(An Application for an injunction pending appeal from from Judgement of the Environment and Land Court of Kenya at Homa-Bay (G. Ong'ondo, J) Dated 6th December, 2023. in Homa-Bay ELC Misc. No. E005 OF 2023)

RULING

1. This matter was listed before us today for hearing of a Notice of Motion dated 22nd January, 2024, in which the applicant seeks inter alia an order that:

“Pending hearing and determination of the appeal, the Honourable Court be pleased to issue a temporary injunction restraining the 4th and 5th respondents, whether by themselves or through

their employees, servants, agents or any other person acting under their instruction, from evicting, taking possession, encroaching, removing and or destroying any perimeter fence/wall or fixture from the applicant’s parcel of land known as Central Kasipul/



Kapchieng/1012 as it existed prior to the resurvey and alteration of the boundaries on 25th May, 2023”.

2. The application is supported by an affidavit sworn by the applicant, Damaris Ayomo Okumu, and on grounds stated on the face of the motion.
3. We note that none of the respondents has filed any reply to the application or any written submissions. Moreover, although all the parties were duly served with a hearing notice for the hearing of the motion, only learned counsel, Mr. Charles Mayiga for the applicant has attended Court for the hearing of the motion.
4. Mr. Mayiga has informed the Court that the applicant is aggrieved by the judgment of the ELC at Homabay delivered on 6th December, 2023, and has filed an appropriate notice of appeal. She is apprehensive that unless the interim order of injunction is granted, the 4th and 5th respondents may demolish her house and fence in accordance with a new boundary that has been purportedly established.
5. As the application is not opposed, we grant the application to the extent of issuing an injunction in favour of the applicant as against the 4th and 5th respondents to the effect that they shall maintain the status quo obtaining as of now, which is that the new beacons which are in place shall remain in place, and the applicant’s house, perimeter wall/fence which is also still in place shall remain in place until the appeal is heard and determined.

Costs of the application shall abide the appeal.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF MARCH, 2024.

HANNAH OKWENGU

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

M. GACHOKA, CIArb, FCIArb

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

