



**Ogendi v Odhiambo (Sued on her Own Behalf and as the Legal Administrator of the Estate of Johnson Odhiambo Ogolo -Deceased) (Environment & Land Case E002 of 2024) [2024] KEELC 1469 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1469 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY**

**ENVIRONMENT & LAND CASE E002 OF 2024**

**GMA ONGONDO, J**

**MARCH 14, 2024**

**IN THE MATTER OF: LIMITATION OF ACTIONS ACT, CHAPTER 22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: SECTIONS 37 AND 38 OF THE LIMITATIONS OF ACTIONS ACT**

**AND**

**IN THE MATTER OF; CLAIM FOR ADVERSE POSSESSION/PRESCRIPTION**

**AND**

**IN THE MATTER OF SECTION 28 OF THE LAND REGISTRATION ACT, NO 3 OF 2012**

**AND**

**IN THE MATTER OF LR NO. KADEM MUHURU BAY/635**

**BETWEEN**

**CASMIE MBORI OGENDI ALIAS CASMIEL MBORI OGENDI ..... PLAINTIFF**

**AND**

**FREDRICK ONYANGO ODHIAMBO (SUED ON HER OWN BEHALF AND AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF JOHNSON ODHIAMBO OGOLO -DECEASED) ..... DEFENDANT**

**RULING**

1. By a Notice of Motion application dated 1st February 2024, the plaintiff/applicant through Oguttu Mboya, Ochwal and Partners Advocates is seeking the Principal orders infra;
  - a. The Honourable Court be pleased to grant an order of temporary injunction restraining the Defendant/Respondent herein either by herself, agents, servants, employees and/or



anyone claiming under the Defendant/Respondent, from entering onto, Encroaching upon, selling and/or disposing of, charging, leasing, trespassing onto, ploughing, cultivating and/or otherwise interfering with, threatening to forcibly enter upon, fencing and/or in any other manner dealing with the suit property that is, LR No. West Kasipul/Kodera Kamiyawa/410 and/or any portion thereof, pending the hearing and determination of the suit.

- b. In the alternative and without prejudice to the foregoing, the Honourable Court be pleased to order and/or direct the Maintenance of Status Quo in respect of, LR No. West Kasipul/Kodera/Kamiyawa/410 and more particularly, barring and/or prohibiting the defendant/Respondent from entering upon, encroaching upon, selling and/or disposing of, charging, leasing, trespassing onto, ploughing, cultivating and/or otherwise interfering with, threatening to forcibly enter upon, fencing and/or in any other manner dealing with the suit property that is, LR No. West Kasipul/Kodera Kamiyawa/410 and/or any Portion thereof, pending the hearing and determination of this suit.
  - c. Costs of this Application be borne by the Defendant/Respondent.
2. Learned counsel W. Ochwal of Oguttu Mboya, Ohwal and Partners Advocates for the applicant has proposed that the application be compromised on terms.
  3. Mr Omuthe, learned counsel for the defendant/respondent has affirmed the proposal by the plaintiff/applicant's counsel.
  4. In light of the affirmed proposal by counsel for the respective parties and being guided by Article 159 (2) (c) of the *Constitution* of Kenya, 2010, the Court of Appeal decision in *Ogada v Mollin* [2009] KLR 620, section 13 (7) (a) of the *ELC Act*, 2015 (2011) and in the interest of justice, it is hereby ordered and directed that;
    - a. The notice of motion application dated 1<sup>st</sup> February 2023 is hereby determined by consent of parties.
    - b. So, the plaintiff to continue in possession and occupation of the suit property herein and there be no fresh development or sell, disposal in any manner including transfer or charge of the same pending the hearing and determination of this suit.
    - c. Costs of the application be in the cause.
  5. It is so ordered.

**DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 14<sup>TH</sup> DAY OF MARCH 2024.**

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

**JUDGE**

Present

- 1.W. Ochwal learned counsel for the plaintiff/applicant
2. Omuthe learned counsel for the defendant/applicant
3. T. Luanga, court assistant

