



**Wekesa (Suing as the Personal Representative of the Estate of Wekesa Sinino
Alfunzi – Deceased) v Kusienya (Sued on His Own Behalf and on Behalf
of the Estate of Marko Kusienya Sinino) & 4 others (Environment & Land
Case E014 of 2023) [2024] KEELC 3436 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3436 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E014 OF 2023**

DO OHUNGO, J

APRIL 29, 2024

BETWEEN

**BELINDA WALIAMBILA WEKESA (SUING AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE OF WEKESA SININO ALFUNZI –
DECEASED) PLAINTIFF**

AND

**THOMAS MUTERE KUSIENYA (SUED ON HIS OWN BEHALF AND ON
BEHALF OF THE ESTATE OF MARKO KUSIENYA SININO) .. 1ST DEFENDANT**

MARK KUSIENYA SININO 2ND DEFENDANT

JAMILA WAKASA WANJALA 3RD DEFENDANT

LAURENT MISIGO KISIBO 4TH DEFENDANT

FELIX KUSIENYA JUMA 5TH DEFENDANT

RULING

1. The plaintiff moved the court through plaint dated 19th June 2023 wherein he averred that land parcel number Kakamega/Lugari/101 was registered in the name of Marko Kusienya Sinino and that Wekesa Sinino Alfunzi filed Lugari Land Tribunal Case No. 9 of 2000 wherein the tribunal awarded the parcel to Wekesa Sinino Alfunzi with an order that Marko Kusienya Sinino gets 7 acres. That the tribunal award was adopted through Kakamega CM Misc. Award No. 106 of 2000 as a judgment of the court. That Marko Kusienya Sinino subdivided Kakamega/Lugari/101 into Kakamega/Lugari/2075 to 2080 and that upon Marko Kusienya Sinino passing away, the first defendant who became the administrator of Marko's estate further subdivided Kakamega/Lugari/2075 into Kakamega/Lugari/2361 and 2362 and Kakamega/Lugari/2361 into Kakamega/Lugari/5158 and 5159. The plaintiff therefore prayed for



judgment against the defendants for an order effecting the award in Kakamega Misc. Award No. 106 of 2000, eviction and permanent injunction.

2. Shortly after filing the plaint, the plaintiff filed Notice of Motion dated 31st July 2023 through which he is seeking an injunction “restraining the defendants, their agents/servants from evicting and/or in any way or manner interfering with the plaintiff’s quiet use and enjoyments of the suit properties pending the hearing and determination of this application Interparties and thereafter pending the hearing and determination of this suit and/or in the alternative the court be pleased to maintain the status quo as at 19th June, 2023 at the time of filing this suit” and “a prohibitory order do issue restraining any further alienation of land parcels Kakamega/Lugari/2076, 2077, 2078, 2089, 2080, 5158 and 5159.”
3. The application is supported by an affidavit sworn by the plaintiff. She reiterated the averments in the plaint. The application was withdrawn as far as second, third and fifth defendants are concerned.
4. The first defendant filed a replying affidavit in which he deposed that the matter is res judicata in view of the award in Kakamega Misc. Award No. 106 of 2000 and Civil Appeal No. 145 of 2003 and further that there is Kisumu Civil Appeal No. 157 of 2018 is pending. He added that his father Marko Kusienya Sinino was the indefeasible proprietor of Kakamega/Lugari/101 with full rights to use it as he wished.
5. The fourth defendant opposed the application through a replying affidavit in which he deposed that the application should be dismissed since it does not state the parcel numbers in respect of which the injunction is sought. He further stated that the matter is res judicata in view of the award in Kakamega Misc. Award No. 106 of 2000 and Civil Appeal No. 145 of 2003.
6. The application was canvassed through written submissions. I have considered the application, the affidavits, and the written submissions. The sole issue for determination is whether the reliefs sought should issue.
7. The plaintiff is seeking an interlocutory injunction. The principles applicable while considering such an application are that the applicant must establish a prima facie case with a probability of success. Even if she succeeds on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience. All these conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicant is expected to surmount sequentially. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. See *Giella -vs- Cassman Brown & Co Ltd* [1973] EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
8. At the core of the plaintiff’s case as presented is ownership of land parcel number Kakamega/Lugari/101 which the plaintiff concedes was resolved in Kakamega Misc. Award No. 106 of 2000. The other parcels which the plaintiff has cited were all created following subdivision of Kakamega/Lugari/101. Among the reliefs which the plaintiff is seeking in this case are an order effecting the award in Kakamega Misc. Award No. 106 of 2000, eviction and permanent injunction. I am yet to fathom why and how the plaintiff intends to obtain enforcement of a decree made in another suit through this present suit. I am not surprised that the defendants are raising the question of *res judicata*. Suffice it to state that I am not persuaded that the plaintiff has a *prima facie* case with a probability of success. Similarly, I am not persuaded that a case has been made to warrant issuing an inhibiting or restraining any further alienation of land parcel numbers Kakamega/Lugari/2076, 2077, 2078, 2089, 2080, 5158 and 5159.



9. I find no merit in Notice of Motion dated 31st July 2023 and I dismiss it with costs to the first and fourth defendants.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 29TH DAY OF APRIL 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Mondia for the plaintiff

No appearance for the defendants

Court Assistant: M. Nguyayi

