



**Olumatia v Opaque & another (Environment & Land Case
477 of 2014) [2024] KEELC 4172 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4172 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 477 OF 2014
DO OHUNGO, J
MAY 23, 2024**

BETWEEN

PENINA LYNET OLUMATIA PLAINTIFF

AND

LUKAS ORENDE OPAKE 1ST DEFENDANT

PROTUS OMBAKA SHITUBI 2ND DEFENDANT

RULING

1. Judgment was delivered in this matter on February 26, 2019 by N.A. Matheka, J., granting orders as follows:
 1. An order of cancellation of titles in land parcel numbers East Wanga/isongo/3812 and 3813 so that the same reverts to its original number and an order of specific performance that the defendants be compelled to appear before the land control board and sign all the relevant documents in favour of the plaintiff to create and transfer a portion of land measuring 1 acre in the names of the plaintiff from either the original number comprised in title number East Wanga/isongo/923 or from the new created numbers comprised in land parcel numbers East Wanga/isongo/3812 and 3813 and in default the Deputy Registrar of this court be authorized to sign them on behalf of the defendants.
 2. An order of permanent injunction restraining the defendants from evicting the plaintiff or in any way interfering with the plaintiff's portion of 1 (one) acre in the said land or the new title that would have been created out of the said land.
 3. Costs of the suit to be borne by the 1st Defendant.
2. Subsequently, the court made the following orders on April 25, 2023:



- a. The first defendant to fully comply with the judgment delivered herein on February 26, 2019 within 21 (twenty-one) days from the date of this ruling.
 - b. In default:
 - i. An order shall automatically issue directing the County Land Registrar Kakamega and the County Land Surveyor Kakamega and their authorized personnel to visit land parcel number East Wanga/Isongo/923 to implement the decree and judgment dated February 26, 2019.
 - ii. The Officer Commanding Makunga Police Station, Shianda Police Station, and the Assistant County Commissioner East Wanga Sub-County to provide the County Land Registrar, the County Land Surveyor and their authorized personnel with adequate security while implementing the decree and judgment of this Honourable Court.
 - c. Costs of Notice of Motion dated February 21, 2023 shall be borne by the first defendant.
3. Later, the first defendant filed Notice of Motion dated September 27, 2023, which is the subject of this ruling. He seeks the following orders:
1. The instant application be certified as urgent and the same be heard on priority basis.
 2. Pending *inter-parte hearing* of this Application, this Honourable court be pleased to issue an order of temporary injunctions restraining the Respondents by themselves, their agents, servants or anyone acting on their behalf from implementing the county surveyors report emanating from his/her visit to the suit land which report has not been served upon the Applicant to date.
 3. Costs of this Application be borne by the Respondents.
 4. Such further and/or other orders be made as the court may deem fit and expedient.
4. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the first defendant. He deposed that pursuant to the ruling delivered on April 25, 2023, the County Land Registrar Kakamega visited the suit property to implement the judgment but to his dismay, the team hived off 1 acre in the middle of the suit property as opposed to where the plaintiff had constructed her houses. He added that he had not been served with any report following the exercise.
5. The plaintiff opposed the application through a replying affidavit in which she deposed that the injunctive orders sought cannot issue since they are not anchored on any pending suit. She denied that the County Land Registrar Kakamega and the County Land Surveyor Kakamega went contrary to the ruling delivered on April 25, 2023 or that the applicant had not been served with a copy of the report. She added that the County Land Registrar Kakamega and the County Land Surveyor Kakamega visited the site in the presence of the applicant and carried out the exercise without any objection from him.
6. The application was canvassed through written submissions which both the applicant and the plaintiff filed. The second defendant neither responded to nor participated in the hearing of the application.
7. I have considered the application, the affidavits and the submissions. The issue that arises for determination is whether the reliefs sought should issue.
8. It will be noted that as drawn, the application seeks an injunction “Pending *inter-parte hearing* of this Application.” Consequently, the application stood spent, overtaken by events and moot as of the date of its *inter-parte hearing*. As the Supreme Court stated in *Dande & 3 others v Inspector General*,



National Police Service & 5 others (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated)) [2023] KESC 40 (KLR) (16 June 2023) (Judgment), a matter is moot when there exists no live controversy with the result that the court's decision would not have the effect of resolving any actual and present controversy. As drawn, the application does not present any live controversy as of the *inter-parte hearing* date and this date.

9. The foregoing aside, the orders of April 25, 2023 were very clear that the first defendant was to fully comply with the judgment delivered herein on February 26, 2019 within 21 (twenty-one) days from April 25, 2023. He did not comply, with the result that the County Land Registrar Kakamega and the County Land Surveyor Kakamega as well as their authorized personnel had to visit the suit property to enforce compliance. It is too late in the day for the applicant to complain.
10. I find no merit in Notice of Motion dated September 27, 2023. I dismiss the application with costs to the plaintiff.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 23RD DAY OF MAY 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Isiaho holding brief for Mrs Chungu for the plaintiff

Mr Anyona for the first defendant

No appearance for the second defendant

Court Assistant: M Nguyayi

