



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otieno (Suing as Personal Representative of the Estate of Ogweny Wayungu) v Awuor  
(Environment & Land Case E009 of 2025) [2025] KEELC 787 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 787 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE E009 OF 2025**

**E ASATI, J**

**FEBRUARY 24, 2025**

**BETWEEN**

**JACOB ODHIAMBO OTIENO (SUING AS PERSONAL REPRESENTATIVE OF  
THE ESTATE OF OGWENY WAYUNGU) ..... PLAINTIFF**

**AND**

**CHARLES ONDIEK AWUOR ..... DEFENDANT**

**RULING**

1. The application before court for determination is the Notice of Motion dated 13<sup>th</sup> February, 2025 brought pursuant to the provisions of articles 22, 23 and 40 of *the constitution* of Kenya 2010, section 63 ( c) and ( e) of the *Civil Procedure Act* and Order 40 Rules 1 and 4 Civil Procedure Rules 2010.
2. It seeks for an order of temporary injunction restraining the Defendant, his agents, proxies and anyone acting on his behalf from trespassing, occupying, cutting trees, damaging vegetation or otherwise interfering with the suit land parcel numbers Kisumu/Wangaya1/1954 and Kisumu/Wangaya 1/1957 pending hearing of the suit.
3. The grounds upon which the application is brought are that the Applicant is the lawful representative of the estate of Ogweny Wayungu, deceased, that the Defendant's on-going activities are causing irreparable harm to the estate's property and legal rights.
4. The application was supported by the averments in the Supporting Affidavit of the Applicant. He averred that he is the personal representative of the estate of the deceased, that the estate of the deceased includes land parcel number Kisumu/Wang'aya 1/1954 and 1957 which were granted to the family of the deceased by High Court in Judgement dated 27<sup>th</sup> June, 2019 in High Court Succession Case No.807 of 2004.



5. That the Defendant and his agents have entered the land and felled trees and destroyed the natural vegetation. That an order of injunction should issue to stop further damage pending hearing of the suit.
6. There was no response filed by the Defendant. Affidavit of Service sworn by Amos Eliud Osango and filed herein shows that the Defendant was served with application, other pleadings in the case and court order on 19<sup>th</sup> February, 2024.
7. I have considered the application. The annexures to the Supporting Affidavit include photographs showings tree some of which have been felled.
8. However, I have noted from annexure J001 that the Defendant is a joint administrator of the estate of the deceased hence having similar rights of administration and distribution of the estate of the deceased as the Plaintiff. It has also not demonstrated at least prima facie that the trees are being felled on the suit lands. The grounds for issue of an order of temporary injunction as contained in Order 40 Rule 1 of the Civil Procedure Rules and the case of Giella vs Cassman Brown Co. Ltd (1973) 358 have not been demonstrated.

The application is dismissed. No order as to costs.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 24<sup>TH</sup> FEBRUARY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

No appearance for the Plaintiff/ Applicant

No appearance for the Defendant/Respondent

