



Angudha (Suing as an Administrator of the Estate of Angudha Opuro alias Samwel Angudha Opuro S. Angudha Opuro - Deceased) v Nyauke & another (Environment & Land Case E003 of 2024) [2024] KEELC 4576 (KLR) (11 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4576 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE E003 OF 2024**

GMA ONGONDO, J

JUNE 11, 2024

BETWEEN

TOM ONYANGO ANGUDHA PLAINTIFF

**SUING AS AN ADMINISTRATOR OF THE ESTATE OF ANGUDHA OPURO
ALIAS SAMWEL ANGUDHA OPURO S. ANGUDHA OPURO - DECEASED**

AND

PETER OGOLLA NYAUKE 1ST DEFENDANT

COUNTY GOVERNMENT OF HOMABAY 2ND DEFENDANT

RULING

1. This ruling is in respect of the application by way of notice of motion dated 27th February 2024 commenced pursuant to, *inter alia*, Order 40 Rules 2, 2, 3 and 4 of the [Civil Procedure Rules](#) 2010 by the plaintiff/applicant in person for orders thus;
 - a. Moot
 - b. Moot
 - c. Pending hearing and determination of this suit, may the Honourable Court be pleased to grant the applicant/plaintiff orders of temporary injunction restraining the respondents/defendants in person, their relatives, employees, servants and any other person deriving authority from the respondents/defendants from constructing, erecting any structure, alienating, charging and or dealing with the suit plot No. 7 at Adongo (Koduogo) Market (The suit land herein) until the case is heard and finalized.
 - d. Costs of this application may be in the cause.



2. The application is premised upon the applicant's supporting affidavit of twelve paragraphs sworn on 21st February 2024 and the annexed documents, *inter alia*, certificate of grant of limited letters of administration ad litem and filing receipt (TOA-1a and 1b respectively), allotment letter (TOA-2) and a sketch map (TOA-5). Further, the same is founded upon grounds (a) to (g) which include;
 - a. That the 1st respondent/defendant has encroached and or trespassed into the suit land and has commenced constructing a permanent commercial building thereon in the name of Samwel Angudha Opuro alias S. Angudha Opuro, Angudha Opuro (deceased herein).
 - b. That if the construction on going is not stopped pending hearing and determination of this application and the main case, then the estate of the deceased may go at a waste.
3. Briefly, the applicant's lamentation is that the suit land belongs to his late father, the deceased who was issued with plot rent card in the year 1974 and that the requisite rates in respect of the suit land, have been paid to the 2nd respondent by the dependents of the deceased to-date. That the 1st respondent is constructing a permanent commercial building thereon. That therefore, he may suffer irreparable loss if the orders sought in the application are not granted.
4. In the replying affidavit sworn on 6th March 2024, the 1st respondent formerly represented by G S Okoth and Company Advocates and currently by Nancy Nyarige and Company Advocates, opposed the application and annexed documents marked as PON-1 to PON-3. He averred, inter alia, that he was allotted plot number 14 in Adongo (Koduogo) Market further to judgment delivered in Migori Environment and Land Court Petition No. 4 of 2020-PON-1. That he started to construct a permanent commercial building on the said plot and not on the suit land which is in the name of the deceased.
5. Also, the 1st respondent stated that the grant of letter of administration issued to the plaintiff is unsigned-PON-2. That the plaintiff/applicant has no locus standi to originate the application which is pre-mature and contrary to section 54 of the [Law of Succession Act](#) Chapter 160 Laws of Kenya.
6. By the replying affidavit sworn 11th April 2024 by Antony Bala, the Land Administrator of the 2nd respondent, averred that the suit land is in the name of the Deceased. He relied on land search certificate dated 19th March 2024 (AB-1), an extract register of land rates payment (AB-2) as well as surveyor's map showing location of the suit land (AB-3) and stated that the 2nd respondent is a stranger to the applicant's allegations.
7. In a further affidavit sworn on 22nd April 2024, the applicant averred that he had obtained a duly signed copy of Limited grant of letters of Administration dated 12th March 2024 which he annexed to the affidavit. He urged the court to disregard procedural technicality in this matter.
8. The application was heard by way of written submissions further to the court's directions of 14th March 2024.
9. In the submissions dated 25th April 2024, learned counsel for the applicant stated that there are developments on the suit land. Reference was made to the orders sought in the application, the grounds of the application, Order 40 (*supra*) as well as the case of *Giella v Cassman Brown* (1973) EA 358, [Nguruman Ltd v Jan Bonde Nielsen and others](#) (2014) eKLR and [Mrao Ltd v First American Bank of Kenya Ltd](#) (2003) eKLR and Article 159 (2) (a) (b) (c) (d) and (e) of the [Constitution of Kenya](#) 2010, in support of the application. Counsel termed the application meritorious and prayed for grant the orders sought therein.
10. By the submissions dated 4th April 2024, G.S Okoth learned counsel for the 1st respondent stated that the applicant lacked locus standi to mount the application as he presented an unsigned limited grant



of letters of administration. In support of the submissions, counsel relied on *Black's Law Dictionary* 9th Edition 1626 as well as the case of *Lucy Jebet Kiptoo v Kiptoo Kirui* (2021) eKLR and implored the court to dismiss the application.

11. The 2nd respondent did not file and serve any submissions herein.
12. In the foregone, is there merit in application to entitle the applicant to the orders sought in the application?
13. The principal order sought in the application is an equitable one and grantable at the discretion of the court; see *National Bank of Kenya Ltd v Shimmers Plaza Ltd* (2009) KLR 278 at 283.
14. Order 40 (*supra*) governs temporary injunction and orders. Also, I am well guided by *Nguruman Ltd and Giella cases (supra)*.
15. It is trite that temporary injunction must satisfy the effect of flora and fauna; *Bob and Ursulla Brenneisen & 7 others v Shanzu Water Front* (2016) eKLR.
16. In the case of *Hutchings Biemer Ltd v Barclays Bank of Kenya & others* (2006) eKLR, the Court of Appeal opined thus;

“Injunctive orders are meant to preserve property and maintain the status quo.....”
17. The 1st respondent's allegation that the applicant lacks Locus Standi herein, is cured by a signed grant of letters administration as stated in paragraphs 7 and 10 hereinabove as provided for under section 2 of the *Civil Procedure Act* Chapter 21 Laws of Kenya; see also *Rajesh Chudasama v Sailst Chudasama* (2014) eKLR.
18. Indeed, the issues in the application are highly contested and their determination in the suit on merits is called for. In the circumstances, interim preservation of the suit land would be necessary.
19. I subscribe to the decision in the case of *Ogada v Mollin* (2009) eKLR that the essence of doctrine of Lis pendens is to maintain status quo over a property until the suit is determined or terminated.
20. This court is mandated under section 13(7) (a) of the *Environment and Land Court Act* 2015 (2011) to grant interim preservation orders. Status Quo order is inclusive thereunder.
21. In conclusion, I find some merit in the application.
22. Thus, the order merited in the application is the status quo order pending the hearing and determination of this suit. In particular, the respondents shall not further construct, erect any structure, sell, alienate charge and or deal with the suit land pending the outcome of this suit.
23. Costs of the application be in the cause.
24. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 11TH DAY OF JUNE 2024.

G.M. A ONG'ONDO

JUDGE

Present;

1. Applicant.

2. Ms. O. Odhiambo, instructed by G.S Okoth learned Counsel for the 1st defendant.



3. Ms. B. Ochieng learned counsel for the applicant/plaintiff.

4. Mutiva F, court assistant.

