



**Awiti & another v Oyoko (Sued as Legal Representative of Oyoko Ochieng);  
Onyango & another (Interested Parties) (Environmental and Land Originating  
Summons E015 of 2024) [2024] KEELC 5489 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5489 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E015 OF 2024**

**M SILA, J  
JULY 25, 2024**

**BETWEEN**

**JOYCE AWITI ..... 1<sup>ST</sup> PLAINTIFF**

**DANIEL JUMA OLOO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MARK ODHIAMBO OYOKO (SUED AS LEGAL REPRESENTATIVE OF  
OYOKO OCHIENG) ..... RESPONDENT**

**AND**

**DISMAS OKEYO ONYANGO ..... INTERESTED PARTY**

**SAMWEL OKEYO OYUGI ..... INTERESTED PARTY**

**RULING**

(Application for injunction filed by the applicants to the Originating Summons; no prima facie case established; application dismissed with costs)

1. The application before me is that dated 18 March 2024 that was filed contemporaneously with an Originating Summons which commenced this suit. The application seeks orders to have the respondent and the interested parties restrained by an order of injunction from “entering into, disposing of, remaining in possession, and/or in any other way dealing with the suit properties being land parcels numbers Suna West/Wasweta II/3958, 3959 and 3960 pending the hearing and determination of the main suit.” The application is opposed by the 1<sup>st</sup> interested party.
2. As I have mentioned, this suit was commenced through an Originating Summons said to be brought under Order 37 Rule 7 and Section 38 of the *Limitation of Actions Act*, Cap 22, Laws of Kenya. These are provisions of law where one files suit when seeking orders for title to land by way of adverse



possession. I have gone through the Originating Summons but it is not very clear to me what land title is being sought by the applicants. What I derive is that the applicants, who are suing as representatives of the estate of William Oloo Opuku (deceased), aver that in 1968, the said Opuku purchased four acres of land from Oyoko Ochieng (deceased), from the land parcel Suna West/Wasweta II/255 at Kshs. 800/=. They say that the said land parcel No. 255 was subdivided into the land parcels No. 2231 and 2232 which were again further subdivided and among the resultant subdivisions are the parcels No. 3958, 3959 and 3960. These three parcels of land are registered in the name of the 1<sup>st</sup> interested party. Now, if it is the case of the applicants that they wish to have title to these parcels of land No. 3958, 3959 and 3960, I wonder why they are not suing the 1<sup>st</sup> interested party as a substantive respondent. I also wonder why any other person is being sued if that person is not the proprietor of these land parcels No. 3958, 3959 and 3960. I have also not seen any tangible evidence through a survey report, or other acceptable expert report, which points at which land the applicants are in actual possession of. I am also at a loss as to why so many other parcels of land are being mentioned in the case if they are not being claimed by the applicants.

3. In the reply of the 1<sup>st</sup> interested party, he has deposed that he sued the applicants in the suit Migori CMCC No. 112 of 2018 seeking to have them restrained from the land parcel No. 3958. He had in that suit stated that he was willing to transfer the land parcels No. 3959 and 3960 to the applicants. He was successful in his suit and the applicants were restrained by an order of permanent injunction from the land parcel No. 3958 in a judgment delivered on 24 June 2021. I have seen that the applicants filed an appeal to the superior Environment and Land Court, being Migori ELCA No. 36 of 2021 which appeal was dismissed on 29 November 2023. It is thus apparent that a court of competent jurisdiction has already established that the applicants have no right in the land parcel No. 3958. As to the parcels No. 3959 and 3960, there was already an offer from the 1<sup>st</sup> interested party to transfer it to them. I wonder why they are now filing suit against the 1<sup>st</sup> respondent. They should simply pursue the offer made by him (if it is still alive). It is not necessary to file suit.
4. Given the above, I am not persuaded that this is a fit case to issue any order of injunction. I am not, at this stage of the proceedings, persuaded that the applicants have demonstrated any prima facie case with a probability of success. If they still insist on pursuing this matter, and feel that they are capable of proving it on merits after a full hearing, that is well and good. However, they will proceed without the benefit of an order of injunction.
5. Before I close, I need to mention that a lot of the documents filed by counsel for the applicants are not even legible. I wonder on what basis counsel wishes court to make a determination if the court itself is barely able to read much of the documents presented.
6. For the above reasons, this application is dismissed with costs.
7. Orders accordingly.

**DATED AND DELIVERED THIS 25 DAY OF JULY 2024**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MIGORI**

Delivered in presence of :

Ms. Kimberly h/d for Ms. Obwanda for the applicants

N/A for the defendant and interested parties



Court Assistant : David Ochieng'

