



**Odhiambo ((Suing as the Legal Representative of the Estate of Eliazaro Odhiambo Odongo - Deceased)) v Okoth & another (Environment & Land Case E57 of 2022) [2023] KEELC 168 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 168 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E57 OF 2022**

**A OMBWAYO, J  
JANUARY 19, 2023**

**BETWEEN**

**GEORGE JACKONIAH ODHIAMBO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ELIAZARO ODHIAMBO ODONGO - DECEASED) ..... PLAINTIFF  
(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ELIAZARO ODHIAMBO ODONGO - DECEASED)**

**AND**

**SARAH ONYANGO OKOTH ..... 1<sup>ST</sup> DEFENDANT  
THE ESTATE OF BOB ROBERTS OKOTH ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. In this matter there are two applications one dated September 9, 2022 wherein the applicant seeks order that pending the interpartes hearing and determination of this suit, a temporary injunction be issued restraining the defendants or any of them whether by themselves, their servants or agents or any of them from wasting, damaging, alienating, selling, leasing charging further sub-dividing or in any other manner whatsoever from dealing with the suit property known as Rongai/Lenonet Block 2/33 (Mawe Farm) and or Rongai/Lengenet Block 2/269 ( Mawe Farm) or any surrogate titles therefrom as this Honorable Court may Order in a manner detrimental or contrary to the interests of the Estate of Eliazaro Odhiambo Odongo.
2. The applicant prays that pending the interpartes hearing and determination of this suit, the 1<sup>st</sup> defendant be ordered to deposit in Court or with her Advocates all of the Original title documents in respect of Rongai/Lengent Block 2/269 ( Mawe Farm) and all other titles with respect to the subdivision or Rongai/Lengenet Block2/33 ( Mawe Farm) as may be in her possession and any other surrogate title documents against a professional undertaking by such Advocate to hold the same



- intact until such further orders of the Court and to further supply the plaintiff's Advocates with all the documents including Mutation Forms and Land Control Board Consents used in the said sub-division.
3. The application is based on grounds that Bob Robert Okoth, deceased husband of the 1<sup>st</sup> defendant having been issued with a grant of letters of Administration on September 2, 1991 he was the Administrator of the Estate of Eliazaro Odhiambo Odongo ("the deceased Intestate") from 2<sup>nd</sup> September 1991 until his death on February 20, 2015.
  4. That upon the death of the said Administrator, the plaintiff was issued with a grant of letters of administration of the estate of the said Eliazaro Odhiambo Odongo to enable him finalize the administration and distribution of the Estate. After taking over the Administration, it emerged that while filing the Petition for a Grant of Representation in the said estate and in the Summons for confirmation of Grant, the 1<sup>st</sup> defendant's late husband, had fraudulently concealed from the court that the deceased intestate was also the beneficial or legal owner of the property known as Rongai/Lengenet Bloc2/33 measuring thirty three decimal four (33.4) acres or thereabouts situated in the now Nakuru County, which property was therefore part of the assets in his Estate.
  5. According to the applicant It also emerged that the deceased administrator had after the death of the deceased intestate transferred or procured the issuance of the title documents to himself without going through the succession process and subdivided the said property leading to the carving out of Rongai/Lengenet Block 2/269 (Mawe Farm) measuring 28.10 acres, such that 5.3 Acres of the original 33.4 acres are currently unaccounted for and the plaintiff is concerned that the same may have been sold or otherwise dealt with without an account to the Deceased Intestate's Estate.
  6. The applicant claims that the 1<sup>st</sup> defendant has had a belligerent attitude towards the Deceased Intestate's beneficiaries and has already filed her husband's Succession Cause (No E1249 of 2020) in which she has fraudulently purported to include the said Rongai/Lengenet Block2/33 and the carved-out portion being Rongai/Lengenet Block 2/269 (Mawe Farm) as part of her husband's list of asset and that If not restrained as prayed and the Defendant succeeds in transferring the said Rongai/Lengenet Block 2/269 (Mawe Farm) or any other surrogate subdivisions of Rongai/Lengenet Block 2/33 to third parties, the beneficiaries of the Deceased Intestate's Estate will be extremely prejudiced and suffer irreparable harm difficult to recover by way of damages as the defendant resides in the USA outside the jurisdiction of this honorable court.
  7. The applicant states that it is necessary to urgently preserve the said Rongai/Lengenet block 2/269 (Mawe Farm) and any other surrogate subdivisions of Rongai/Lengenet Block 2/33 so as to prevent wastage of the deceased Intestate's Estate and to prevent a miscarriage of justice.
  8. In reply to the application the respondent filed grounds of opposition and replying affidavit whose import is that that the current application is res subjudice the application dated August 23, 2022 in that the application seeks similar and identical orders to enforce the ruling delivered by the Lady Justice Maureen Odero on May 27, 2022.
  9. According to the tenor of the order sought, the applicants seeks that an order given by Justice Maureen Odero on May 27, 2022 requiring that from 27<sup>th</sup> May 2022, all rental income derived from LR No.36/1/778 be deposited into a Bank Account to be opened and held in joint names of the advocates for the two parties be set aside and that upon prayer 2 being granted, an order be given that all rental income derived from LR No.36/1/778 be deposited into a Bank Account to be opened and held in the joint names of the applicants advocates and deputy Registrar of this honorable court;



10. The applicants therein seek a declaration that the 1<sup>st</sup> respondent defied this honorable court's order of May 27, 2022 requiring her to cooperate with the applicant's in transferring by way of vesting Assent the property known as LR No.36/1/778 to the three beneficiaries' names in the rectified certificate of Grant dated June 3, 2019,
11. They pray that upon the prayer above being granted an order be issued that the Deputy Registrar of this honorable Court be authorized to sign all necessary documents for the process of vesting the suit property, LR No.36/1/778 to the beneficiaries and selling and transferring the same and accounting for the sale proceeds to the beneficiaries including the 1<sup>st</sup> respondent.
12. That the current suit and application was intitled when the applicant hit a snag to both review and pursue an appeal in the
13. Court of Appeal in the Court of Appeal Civil Appeal number 222 of 2022. That the current suit is res – subjudice succession cause number 949 of 1990 and succession cause number E1249 of 2020.
14. I have considered the application and do find that property number Rongai/Lengenet Block 2/33( Mawe) had never been subject to any succession cause and yet it was owned by the deceased Eliazaro Odhiambo Odongo the deceased. How Bob Robert subdivided the same in a tale to be determined by this court. In the decision by Hon Justice Muchelule, he observed and I quote:-

The other property subject of the application for temporary injunction was Rongai/Lengenet Block2/33 (Mawe). The common grounds was that this property belonged to Eliazaro, and not the deceased. An injunction would only issue to protect the estate of the deceased. The deceased did not own the property. The deceased subsequently subdivided the parcel and got a portion of it contained in Rongai/Lengenet/Block2/639, but this was not the subject of the application. Further, a question mark has been raised on how the acquisition of this subdivision by the deceased was done.

Under section 3 of the Act, the court can only protect the free property of the deceased. Where there is a dispute of ownership that was to be determined. Where an interlocutory injunction is sought on such a property, the applicant has to demonstrate a prima facie case with a probability of success; has to show that the will suffer irreparable damages if the injunction is not granted; and, in case of doubt, the court has to consider the balance of convenience ( *Giella -vs- Cassman Brown* ( 1973) EA 358)

15. In this case, there is a dispute as to the ownership of Rongai Lengenet Block 2/33 (Mawe) and therefore this court has to make a determination of ownership. It is alleged that it was dealt with fraudulently. The plaintiff in this matter is the younger brother of Bob Robert Okoth and both are sons of the deceased Eliazaro Odhiambo Odongo. Bob Robert was the initial Legal representative of the Estate of Eliazaro Odhiambo Odongo but was replaced by the plaintiff upon demise. I do find that the plaintiff has established a prima facie case with a likelihood of success in respect of property number Rongai/Lengenet Block2/33/(Mawe) as it appears to have belonged to the deceased Eliazaro Odhiambo Odongo. This court finds that the plaintiff is likely to suffer irreparable harm if the injunction is not granted as the property had already been subdivided and is likely to be further subdivided.
16. On a balance of convenience this court finds that it tilts towards protecting the subject matter. The doctrine of Res-subdica does not apply as the property under dispute is not subject to any succession cause. On the 2<sup>nd</sup> application dated 22<sup>nd</sup> November 2022 the only matter pending determination is whether the court should order deposit of Kshs4,000,000 as security for costs. I have considered rival



submission and do find that such an order would be tantamount to denying the plaintiff the access to justice. The application is dismissed with costs in the cause. Ultimately, the court grants orders that pending the hearing and determination of this suit, a temporary injunction be issued restraining the defendants or any of them whether by themselves, their servants or agents or any of them from wasting, damaging, alienating, selling, leasing charging further sub-dividing or in any other manner whatsoever from dealing with the suit property known as Rongai/Lenenet Block 2/33 (Mawe Farm) and or Rongai/Lengenet Block 2/269 ( Mawe Farm) or any surrogate titles therefrom. Costs of the application in the cause.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 19<sup>TH</sup> DAY OF JANUARY 2023.**

**A O OMBWAYO**

**JUDGE**

