



**Obuya v Osoro (Environment & Land Case E017 of 2022)
[2023] KEELC 824 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 824 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E017 OF 2022**

E ASATI, J

FEBRUARY 16, 2023

BETWEEN

JOEL OBUYA PLAINTIFF

AND

WYCLIFE ODHIAMBO S/O ANTONY OLOO OSORO DEFENDANT

RULING

1. Before the court for determination is the plaintiff/applicant's notice of motion application dated May 12, 2022. It is stated to be brought pursuant to the provisions of order 37 rules 1 & 2 and order 40 rule 1 & 2 *Civil Procedure Rules* 2010. The application seeks for orders against the respondent that: -
 - a. That the application be heard *ex parte* and certified urgent and heard on priority.
 - b. That pending the hearing and determination of the application inter partes and or till further orders of this court, an order of injunction restraining the defendant, his agents, successors, employees, antecedents and assigns from wasting, alienating, disposing of a portion of property measuring 0.7 acres (0.2775 Ha.) of the property known as Kisumu/Wawidhi A1/5309 purchased and occupied by the plaintiff and further from trespassing onto, remaining in and or interfering in or with the said property and or with the plaintiff's beneficial proprietary interest in the same.
 - c. Pending the hearing and determination of the suit, an order of injunction restraining the defendant, his agents, successors, employees antecedents and assigns from wasting, alienating disposing of a portion of property measuring approximately 0.7 acres (0.2775 Ha.) of the property Kisumu/Wawidhi A1/5309 purchased and occupied by the plaintiff and further from trespassing into remaining in and or interfering in or with the said property and or the plaintiff's beneficial proprietary interest the same.



- d. That directions on the hearing and determination of the originating summons filed herein shall be that it shall be heard before (1) Judge by way of affidavit evidence.
 - e. Costs and interest
 - f. Any other order the court may deem fit and just.
2. The application is stated to be based on the grounds set out in the affidavit in support of the originating summons sworn by the applicant Joel Obuya. In the said affidavit the applicant deposed that vide a sale agreement dated November 17, 2012 he bought a portion measuring 0.7 acres of land parcel known as Kisumu/Wawidhi A 1/5309 (the suit land) at an agreed purchase price of Kshs 35,000/- which he paid to the defendant by instalment in full and final settlement. That he took possession of the sold portion of land, fenced round it and planted trees. That in the meantime the defendant undertook to formally sub-divide the suit land and curve out the sold portion of land and effect the completion and transfer of the purchased property. The applicant further deposed that on diverse dates in February and March 2022 the defendant invaded and trespassed onto the property by cutting down some of the trees on the property and uprooting some of the sisal fence around the sold portion. That he is a beneficial owner of the property by virtue of acquiring it by purchase and thus he seeks the court's intervention to stop the defendant's trespass and wastage of the property.
 3. The application was unopposed. This court *vide* its order dated 26/1/2023 directed the applicant to serve the respondent in person. An affidavit of service filed subsequently sworn by Andrew Ombwayo Advocate on January 30, 2023 showed that the respondent was served with a hearing notice on 30/1/2023 at 12:47pm to attend court on February 2, 2023 Counsel for the applicant also informed the court that the respondent had called him and confirmed that he was going to attend court.
 4. On the basis of the uncontroverted averments in the applicant's affidavit, particularly that the applicant is in occupation of the sold portion of land and that the defendant is destroying and or wasting the developments thereon i find that a *prima facie* case has been demonstrated. I allow the application dated May 12, 2022 on the following terms.
 - a. An order of temporary injunction restraining the defendant from felling or damaging the trees growing on the disputed portion of the suit land and interfering with the sisal fencing around the sold portion of land pending hearing and determination of the originating summons herein; is hereby granted.
 - b. I give the following directions on disposal of the originating summons: -
 - i. The originating summons be disposed of by way of affidavit evidence. Photographs that parties may wish to rely on in evidence be in be in their original form.
 - ii. Respondent to file and serve replying affidavit to the originating summons within 14 days hereof
 - iii. Applicant to file and serve supplementary affidavit, if any, within 7 days of service.
 - iv. Parties to file and exchange written submissions on the originating summons within 14 days of service of the supplementary affidavit and if no supplementary affidavit is filed, within 14 days, from date of service of the respondent's reply to the originating summons.
 - v. Costs to abide the main suit.
 - vi. Respondent to be notified of those directions.



Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

E. ASATI,

JUDGE.

In the presence of: _

Maureen: Court Assistant.

for the Applicant.

for the Respondents.

