



**Omanga & another (Both Suing as the Administrators of the Estate of
Pauline Nyakerario Orina) v Monda & 5 others (Environment & Land Case
E021 of 2024) [2025] KEELC 890 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 890 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E021 OF 2024
DO OHUNGO, J
FEBRUARY 27, 2025**

BETWEEN

**CLARA KWAMBOKA OMANGA 1ST PLAINTIFF
ROSEMARY MORAA 2ND PLAINTIFF
BOTH SUING AS THE ADMINISTRATORS OF THE ESTATE OF PAULINE
NYAKERARIO ORINA**

AND

**WILLIAM MONDA 1ST DEFENDANT
MARCELLA ANGWENYI 2ND DEFENDANT
ZACHARY ABUTA 3RD DEFENDANT
JOHN OMBUI 4TH DEFENDANT
MIRONG'A MOIBI 5TH DEFENDANT
CHARLES NYANGWENCHA 6TH DEFENDANT**

RULING

1. The Plaintiffs moved the Court through Plaint dated 10th December 2024, which they filed on 11th December 2024. They averred that they are the administrators of the estate of Pauline Nyakerario Orina (deceased) who was the registered proprietor of the parcel of land known as Matutu/Settlement Scheme/222 (the suit property). That one Thomas Robert Orina fraudulently caused subdivision of the suit property and registration of the subdivisions in his favour and the Defendants. That the Defendants' titles were later nullified by the High Court, but the Defendants failed to vacate.
2. The Plaintiffs therefore sought judgment against the Defendants jointly and severally for:



- A. A permanent injunction restraining the Defendants, whether by themselves or their servants or agents or otherwise howsoever from trespassing onto, remaining on or continuing in occupation of the suit property land parcel no. Matutu/Settlement Scheme No.222 or dealing with the suit property in any way.
 - B. That an order directed to the Defendants and or their agents or servants to vacate and give up vacant possession of land parcel no. Matutu/Settlement Scheme No. 222 to the Plaintiffs immediately failure to which the Plaintiffs with the help of the OCPD of the area do proceed to evict by lawful means the Respondents and or their agents or servants from the Suit land parcel no. Matutu/Settlement Scheme No. 222 and demolish any structure of the Respondents or their agents on the suit land.
 - C. A declaration that the Defendants actions are illegal and in breach and/or violation of the law.
 - D. That the Defendants pay for the damages the Plaintiffs have suffered as a result of the impugned invasion.
 - E. Any germane relief deemed fit for grant by the Honourable Court in exercise of its jurisdiction under the Environment and Land Court Ac, (Sic) No. 19 of 2011 (revised) 2012.
 - F. Costs of this suit.
 - G. And any other or further relief as this Honourable court may deem fit to grant.
3. Simultaneously with the Plaint, the Plaintiffs also filed Chamber Summons dated 10th December 2024, which is the subject of this ruling. The following are the prayers in the application:
- 1. [Spent]
 - 2. [Spent]
 - 3. [Spent]
 - 4. Pending the inter-hearing and determination of this suit this Honourable Court be pleased to issue a temporary injunction restraining the 1st Respondent from burying his spouse, Cicilia Kerubo Monda, on any portion of land parcel no. Matutu/Settlement Scheme No. 222.
 - 5. Pending the inter-hearing and determination of this suit this Honourable Court be pleased to issue a temporary injunction restraining the Respondents whether by themselves or their servants or agents or otherwise howsoever from trespassing onto, remaining on or continuing in occupation of the suit property land parcel no. Matutu/Settlement Scheme No. 222 or dealing with the suit property in any way.
 - 6. A permanent injunction restraining the Defendants, whether by themselves or their servants or agents or otherwise howsoever from trespassing onto, remaining on or continuing in occupation of the suit property land parcel no. Matutu/Settlement Scheme No. 222 or dealing with the suit property in any way.
 - 7. That an order directed to the Respondents and or their agents or servants to vacate and give up vacant possession of land parcel no. Matutu/Settlement Scheme No. 222 to the Applicants immediately failure to which the Applicants with the help of the OCPD of the area do proceed to evict by lawful means the Respondents and or their agents or servants from the Suit land parcel no. Matutu/Settlement Scheme No. 222 and demolish any structure of the Respondents or their agents on the suit land.



8. That the Respondents pay for the damages the Applicants have suffered as a result of the impugned invasion.
 9. Any germane relief deemed fit for grant by the Honourable Court in exercise of its jurisdiction under the Environment and Land Court Act (Sic), No. 19 of 2011 (revised) 2012.
 10. The costs of this application be provided for.
4. The application is supported by an affidavit sworn by the First Plaintiff. She reiterated the averments in the Plaint and further deposed that the High Court nullified the Defendants' titles through a ruling delivered on 5th November 2024 in Kisii HC FP&A 228 of 2010 and that following the nullification, the Defendants were expected to cease any dealings with the suit property. She added that the Defendants were yet to vacate the suit property and that the First Defendant's spouse, Cicilia Kerubo Monda had passed away in December 2024 and there was danger of her remains being buried on a portion of the suit property where the First Defendant resided with his family. That such a burial would be a grave injustice to the Plaintiffs and the estate of the deceased. She annexed a copy of the ruling that she referred to and a copy of an invitation to a burial fundraising.
 5. The First defendant opposed the application through a replying affidavit in which he deposed that he purchased his portion from Christopher Nyaundi Orina in the year 1997 and that he had been in peaceful occupation from 1997 to the date of his said affidavit. That the Plaintiffs had approached the Court in bad faith with a view to delay his right to bury his deceased wife on portion of the suit property which he had occupied with his family for over 27 years. He also deposed that the application was an afterthought since the Plaintiffs had participated in funeral arrangements in respect of his deceased wife and in respect of his three grandchildren who were buried on the suit property in July 2018.
 6. The rest of the Defendants also filed replying affidavits, through which they opposed the application. In response to the Defendants' affidavits, the Plaintiffs filed a further affidavit, sworn by the First Plaintiff.
 7. The application was canvassed through oral submissions. It was argued on behalf of the Plaintiffs/Applicants that the Defendants purchased portions of the suit property from persons who were not administrators and that the transactions were null and void. That in view of the ruling by the High Court, the Defendants have no proprietary interest over the suit property and that the orders sought should be issued in the interest of justice to facilitate the administration of the estate. Relying on the cases of *Giella –vs- Cassman Brown & Co Ltd* [1973] EA 358, *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Plaintiffs/Applicants contended that they had established a prima facie case and that they were likely to suffer irreparable damage since the suit property was the subject of a succession cause that had gone on for 15 years.
 8. The Plaintiffs/Applicants also argued that the Respondent's continued occupation of the suit property was inhibiting the administration of the estate and that the balance of convenience tilts in favour of the Plaintiffs. In response to the Defendants' contention that they had not objected to previous burial of other persons on the suit property, the Plaintiffs argued that past non objection is irrelevant and that they have a right to object now. Arguing that departed persons should be buried in places where they will rest in peace and will not face possible exhumation in the future, they urged the Court to allow the application as prayed.
 9. In reply, Counsel for the First and Sixth Defendants argued that the suit is time barred having been brought 27 years late. That the Plaintiffs had not shown that the suit property exists or that it was a part of the deceased's estate. Further, that all the allegations in the application were made against Thomas



Orina who is a brother to the Plaintiffs and who was not made a party to the case. That the ruling of the High Court which the Plaintiffs had relied on is undated and that in the circumstances, the Plaintiffs had failed to establish a prima facie case.

10. Regarding the limb of irreparable loss, the First and Sixth Defendants pondered what loss the Plaintiffs would suffer now if they had not suffered any loss for 27 years. On the test of balance of convenience, they contended that the Defendants had been on the suit property for over 12 years and had built permanent houses thereon, thereby entitled to title by adverse possession. They also contended that prayer numbers 6 to 9 of the application seek substantive orders that cannot be granted at the interlocutory stage and faulted the Plaintiffs for filing a Chamber Summons as opposed to Notice of Motion.
11. Counsel for the Second, Third and Fifth Defendants associated himself with the First and Sixth Defendants' submissions and argued that the Second, Third and Fifth Defendants were not parties in Kisii HC FP&A 228 of 2010 and ought not therefore to be condemned unheard as a result of the orders in the said case. He went on to argue that the Plaintiffs had not satisfied the test for granting an interlocutory injunction. The Second, Third and Fifth Defendants therefore urged the Court to dismiss the application.
12. Lastly, Counsel for the Fourth Defendant associated himself with the submissions of the rest of the Defendants and contended that the Plaintiffs had not produced any certificate search or certified copy of the register to prove existence of the suit property. He also argued that nothing bars purchasers from getting a share of an estate and that the law of succession recognizes purchasers. He therefore urged the Court to dismiss the application.
13. In reply, Counsel for the Plaintiffs argued that the Defendants are at liberty to file a Preliminary Objection on the question of whether the suit is statute barred and have the objection determined. That since the Defendants' possession had been pursuant to a sale transaction, adverse possession is not available.
14. I have considered the application, the affidavits and the submissions. As correctly pointed out by the Defendants, prayer numbers 6 to 9 of the application are a replica of the final orders sought in the Plaint. Such orders should await final hearing and determination of the suit. The law relating to mandatory injunctions at the interlocutory stage is that in the absence of special circumstances, such an injunction will not normally be granted. See *Gusii Mwalimu Investment Co. Ltd & Others v Mwalimu Hotel Kisii Ltd* [1996] eKLR. The Plaintiffs have not demonstrated any special circumstances to warrant granting eviction orders and permanent injunction at this stage.
15. Regarding prayers 4 and 5 which seek interlocutory injunctions, the principles applicable while considering such an application are that the applicants must establish a prima facie case with a probability of success. Even if they succeed on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience. All these conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicants are expected to surmount sequentially. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. See *Giella –vs- Cassman Brown & Co Ltd* [1973] EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
16. The Plaintiffs' case is that the deceased remains the registered proprietor of the parcel of land known as Matutu/Settlement Scheme/222 (the suit property) and that the Defendants' titles in respect of subdivisions of the suit property were nullified by the High Court through a ruling delivered on 5th November 2024 in Kisii HC FP&A 228 of 2010. The Plaintiffs have not exhibited any title document,



certificate of search or certified copy of the register in respect of the suit property. As matters stand, the Court cannot ascertain the registration status of the suit property or even the subdivisions. It seems to me that the Plaintiffs have built their case exclusively around the ruling in Kisii HC FP&A 228 of 2010. They need to establish the ingredients of an interlocutory injunction before this Court and not elsewhere. Their case revolves around proprietorship of the suit property and the ensuing subdivisions, a fact that must be established through certificate of search or certified copy of the registers.

17. From the material on record, it is apparent that the Defendants have been in occupation of portions of the suit property for a long period. The suit property itself is the subject of active litigation in Kisii HC FP&A 228 of 2010 where confirmation of grant is yet to be issued. Undoubtedly, there will still be twists and turns in the succession cause, for that is the nature of contested litigation. I cannot grant an injunction on the basis of a single interlocutory ruling from the succession Court without having site of proprietorship records of the suit property and its subdivisions.
18. I am not persuaded that the Plaintiffs have a prima facie case. In those circumstances, I need not consider the limbs of irreparable injury and balance of convenience.
19. I find no merit in Chamber Summons dated December 10, 2024. I dismiss it with costs to the Defendants.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 27TH DAY OF FEBRUARY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Ms Muyoka holding brief for Mr Ondari for the Plaintiffs

Mr Aminga for the 1st and 6th Defendants

No appearance for the 2nd, 3rd and 5th Defendants

No appearance for the 4th Defendant

Court Assistant: B Kerubo

