



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.42 OF 2016

HENRY AMITO AYIEYE.....APPLICANT

VERSUS

MICHAEL KENNETH AGOGO.....RESPONDENT

RULING

1. **Henry Amito Ayieye**, the applicant, filed the notice of motion under certificate of urgency dated 2nd March, 2016 seeking for **Michael Kenneth Agogo**, the Respondent, to be restrained from using land parcel **Kisumu/Muhoroni/1382** and **1364** pending the hearing and determination of his suit commenced through the plaint of even date. The notice of motion is based on five grounds on its face and supported by the affidavit of the Applicant sworn on 2nd March 2016. The application is opposed by the Respondent through his undated affidavit filed on 18th April 2016.

2. **The notice of motion came up for hearing on the 23rd June 2016 and M/s Kyamazima and Mr Ochieng learned counsel for the applicant and Respondent respectively made their rival submissions.**

3. **The following are the issues for determination:**

a) **Whether the Applicant has established a case for issuance of temporary orders of injunction at this interlocutory state.**

b) **Who pays the costs?**

4. **The court has carefully considered the grounds on the notice of motion, the affidavit evidence by both parties, the rival verbal submissions by parties counsel and come to the following determinations;**

a) **That indeed the Applicant is the registered proprietor of land parcels Kisumu/Muhoroni/1382 and 1384 by dint of the copies of the title deeds and certificates of official searches annexed to his affidavit sworn on 2nd March 2016.**

b) **That the Applicant got registered with parcel Kisumu/Mohoroni/1382 and 1364 on 5th December 2014 and 13th June 2013 respectively.**

c) **That the said two parcels are subdivisions from plot 773, Muhoroni Settlement Scheme, as confirmed by the copy of the title deed for parcel Kisumu/Mohoroni/1364 and the Respondent's affidavit. That plot number 773 borders plot numbers 945, 944, and 827 on the left and plot**

numbers 629, 613, 894, 949, 948 and 947 on the right side. That this is in accordance with the sketch plan attached to the Respondent's affidavit whose contents was not rebutted or challenged.

d) That plot number 947 was allocated to Mrs Helida A. Booker, the mother to the Respondent in accordance with the document attached to the Respondent's affidavit and is one of the plots bordering plot number 773 to the right.

e) That from the letters dated 5th October 2015, 28th September 2015, 30th September 2015, 22nd September 2015 all from the Acting Chief Muhoroni location and letter dated 10th July 2015 from the District Surveyor which are annexed to the Applicant's list of documents dated 2nd March 2016, and paragraphs 5, 6 and 7 of the Respondent's affidavit filed on 18th April 2016, it is apparent that there has been some disputes concerning the boundaries between the parcels of land claimed by the parties herein. That as submitted by counsel for the respondent that under the provision of **Section 18(2) of the Land Registration Act No.3 of 2012**, the first forum for a party to move for redress when there is a boundary dispute is the office of the Land Registrar. That the applicant has not availed any evidence to confirm that a determination by the Land Registrar on the boundary dispute had been made by the time this suit and the application were filed in court.

f) That even though the Applicant is the registered proprietor of the two parcels of land, it appears that there existed a boundary dispute involving those parcels which had not been resolved by the time the Applicant acquired proprietorship. The main prayer in this suit is a permanent injunction and it is only fair that the parties be heard on merit before orders that may result to the Respondent being evicted from the suit land are considered.

5. That in view of the foregoing, the notice of motion dated 2nd March 2016 is devoid of merit and is dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

Dated and Delivered this 28th day of September 2016

In presence of;

Applicant Absent

Respondent Present

Counsel Mr Kyamazima for Plaintiff/Applicant

Mr Odongo for Ochieng for Defendant/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/9/2016

28/9/2016

S.M. Kibunja J.

Oyugi Court Assistant

Defendant present

Mr. Odongo for Ochieng for Defendant

M/S Kyamazima for Applicant.

Court: Ruling delivered in open court in presence of Defendant/Respondent, M/S Kyamazima for Plaintiff/Applicant and

Mr Odongo for Ochieng for Defendant/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/9/2016