



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**ENVIRONMENT & LAND COURT**  
**LAND CASE NO.96 OF 2015**

**DANIEL OMONDI OWIRA ..... 1ST APPLICANT**

**SAMSON OKOME MORE ..... 2ND APPLICANT**

**(SUING AS THE ADMINISTRATORS OF THE ESTATE OF ZEDEKIAH OWIRA  
NYADENGE)**

**VERSUS**

**ABSALOM OPIYO NYAMHORE ..... RESPONDENT**

**(SUED AS A PERSONAL REPRESENTATIVE OF WILLIS ODUOR OPIYO  
(DECEASED))**

**RULING**

1. **Daniel Omondi Owira** and **Samson Okome More**, hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Applicants, filed the amended notice of Motion dated 21<sup>st</sup> August 2015 seeking for **Absalom Opiyo Nyamore**, the Respondent, to be restrained from "continuing to use or cultivate or planting crops, and or trees on the disputed land, the subject matter of this suit being parcel of **Land No.2606/Usenge** land adjudication Section (original) Land title No.860/Usenge land adjudication Section pending the hearing of this application interpartes."

2. The application is based on the six ground set out on the face of the amended notice of Motion. Though the amended notice of Motion mentions at the last paragraph that the " application is further based on the affidavit of the 2<sup>nd</sup> Applicant ..... attached to this application ", there was no such affidavit attached. The only affidavit the court traced was the one attached to the Notice of Motion dated 14<sup>th</sup> August 2015 which was sworn by Samson Okome More on the 14<sup>th</sup> August 2015. The court will take it that this is the affidavit alluded to in the amended notice of motion.

3. The application is opposed by the Respondent through his replying affidavit sworn on the 17<sup>th</sup> September 2015. The matter came up for hearing on 8<sup>th</sup> October 2015 and the parties informed the court that they would rely on their affidavit evidence.

4. The issue for determination is whether the Applicants have made up a case for issuance of injunctive orders at the interlocutory stage. The court has considered the grounds and the affidavit evidence availed and come to the following conclusions;

(a) That the Applicants have filed this suit under the power granted to them through the Limited grant of letters of administration ad litem issued in KISUMU H.C. P & A No.239 of 2015 dated 8<sup>th</sup> April 2015 for the benefit of the estate of Zedekia Owira Nyandenge, who died on 9<sup>th</sup> January 2010 {see copy of the grant in the plaintiff's list of documents dated 10th April 2015.}

(b) That though the Respondent is sued as a personal representative of the Estate of Wills Oduor Opiyo who is reportedly deceased, there is no documentary evidence annexed to any of the pleadings filed herein to confirm that the Respondent has been duly appointed under the Law of Succession Act to represent the estate of deceased. The Respondent has in paragraph 4 of the replying affidavit denied being the next of kin and personal representative of the estate of Willis Oduor Opiyo, and. the Applicants did not challenge that deposition.

(c) The Applicant have not specified how the Respondent has been interfering with the suit land. The witness statements of Magrate Awuor Owira, Pastor Philip Owawa and Dishon Oloo Mahondo filed by the Applicants/Plaintiffs clearly shows that the Respondent left the suit land and settled at Magombe area. The Respondent has in paragraph 3 of his replying affidavit confirmed that position and deponed that the suit land is at Ururi village while he lives at Magombe, Othatch village which is about ten kilometers away.

(d) That prayer 2 as set out in the amended notice of motion is incapable of being issued as it only seeks that the Respondent be injected "pending the hearing of the application." The correct way to phrase the prayer would have been "pending the hearing and determination of the suit."

5. That for reasons set out above, the Applicants have failed to establish that the Respondent has been interfering with the suit land. The application dated 21st August 2015 is therefore without merit and is dismissed with costs.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

**Dated and delivered this 28<sup>TH</sup> Day of October 2015**

In presence of

Applicants present

Respondent bsent

Counsel N/A

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/10/2015

28/10/2015

S. M. Kibuja J.

Oyugi court clerk

Plaintiff present

Defendant absent

Court: Ruling dated and delivered in open court in presence of all plaintiff and absence of defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/10/2015