



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**ENVIRONMENT & LAND COURT CASE NO.62 OF 2015**

**ANN ADHIAMBO OLUM.....1<sup>ST</sup>**  
**APPLICANT**

**LILIAN ATIENO OCHIENG(Suing as administrators of  
the**

**estate of CAMLUS OLUM OKODO (DECEAED)..... 2<sup>ND</sup>**  
**APPLICANT**

**VERSUS**

**SEBASTIAN ACHAR**  
**OKODO.....RESPONDENT**

**R U L I N G**

**Ann Adhiambo Olum** and **Lilian Ateino Ochieng**, herein referred to as 1st and 2nd Applicant filed the notice of motion vide certificate of urgency dated 4<sup>th</sup> March 2015 seeking for four prayers marked 2 to 5. Prayers 2 and 3 are now spent. This ruling therefore relates to prayers 3 and 4 which are for temporary injunction pending the hearing of this suit and costs respectively. The application is based on six grounds marked (a) to (f) and supported by the affidavit of Ann Adhiambo Olum sworn on 4<sup>th</sup> March 2015. She deponed that the Applicants are children of Camlus Olum Okodo and have obtained a grant ad litem to file this suit. That their father was the registered proprietor of **South Gem/Kaudha/1207** from which they want **Sebastian Achar Okodo**, the Respondent, restrained as he has been trespassing onto it and leasing portions of it to third parties.

The Respondent filed a replying affidavit sworn on 10<sup>th</sup> June 2015 in which he denied trespassing onto the land and leasing portions of it to third parties.

He further deponed that Alice Auma Olum, who was wife to his elder brother, Comlus Olum Okodo, had before her death leased the suit land to Charles Omondi Ndalo. He further deponed that he has since learnt that the land had been sold to one Obundo Mumbo. The Respondent further deponed that he filed a restriction over the suit land title to protect the interests of the family.

When the matter came up for hearing on 24th September 2015, Mrs Onyango for the Applicants and the Respondent made their submission.

The issue for determination is whether the Applicants have made a prima facie case with a probability of success for injunction orders to be issued at this interlocutory stage.

The court has considered the grounds on the application, the supporting and replying affidavits plus the oral rival submissions and found as follows:

First, that the said land South Gem/Kaudha/1207 is registered in the names of Olum Okodo since 25th July 1975. The said Olum Okodo was the elder brother to the Respondent and father to the Applicants.

Secondly the said Olum Okondo, who the court takes to be also known as Camilus Olum Okodo, died on 7th April 2003 as shown in the copy of the grant ad litem annexed to the supporting affidavit.

Thirdly the Applicant have obtained the grant of litem to enable them to file this suit.

Further the copy of certificate of official search of the suit land confirms that the Respondent had on 20th Mach 2014 filed a restriction over the title claiming beneficial interests.

The foregoing shows clearly that the estate of the late Olum Okodo is yet to be distributed and that has to be done in accordance with the Law of Succession Act Chapter 160 of Laws of Kenya.

The court has noted that though the Applicants claims that the Respondent has been trespassing onto the suit land and leasing portions thereof to third parties, no specific particulars of the acts of trespass and names of the third parties to whom portions have been leased out were given. The Respondent denied trespassing onto the suit land or leasing out any portions of it to third parties. The Respondent's deponed in paragraph 5 of the replying affidavit that the registered proprietor's widow, Alice Auma Olum, is the one who had leased the land to Charles Omondi Ndalo before she died. The Applicants did not swear an affidavit to deny or challenge that portion of the deposition. They also did not deny or rebut the contents of the Respondent's affidavit that the land has been sold to one Obondo Mumbo.. Even so, the court cannot help but wonder how the suit land would be sold when it was still in the names of a deceased person and no succession cause has been filed.

From the foregoing, the court finds that the Applicants have not shown in what way the Respondent has been trespassing onto the suit land. The Applicants have also failed to offer proof that the respondent has been leasing out portions of the suit land to third parties. The only act that is attributed to the Respondent and which he admitted is the filing of the restriction against this title to the suit land. This suit is not about removal of the restriction and should any party wish to challenge the same, such a party need to take the necessary steps in accordance with Part VII of the Land Registration Act No.3 of 2012.

The court finds no merit in the application dated 4<sup>th</sup> March 2015 and is dismissed with costs and the interim orders of 12<sup>th</sup> March 2015 are hereby vacated.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**21/10/2015**

**Dated and delivered this 21st day of October 2015**

In presence of

Applicant absent

Respondent Present

Counsel Mr Onyango for the plaintiff(s)/Applicant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**21/10/2015**

21/10/2015

S.M. Kibunja j.

Oyugi court clerk

Defendant present

Mrs Onyango for Plaintiff/Applicant

the Defendant/Respondent is in person and present.

Court: Ruling delivered in open court in presence of Defendant in person and

Mrs Onyango for the plaintiff.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**21/10/2015**