



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC NO. 68 OF 2020

JOACHIM RAGUMO MIDIWO.....PLAINTIFF

-VERSUS-

CAMLUS ODANGA ONJIRO.....1ST DEFENDANT

THE COUNTY GOVERNMENT OF SIAYA.....2ND DEFENDANT

THE LAND REGISTRAR SIAYA COUNTY.....3RD DEFENDANT

THE DISTRICT LAND REGISTRAR UGENYA.....4TH DEFENDANT

RULING

Joachim Ragumo Midiwo hereinafter referred to as the applicant seeks orders against Camlus Odanga Onjiro , The County Government of Siaya, The Land Registrar Siaya County and the District Land Registrar Ugenya hereinafter referred to as the Respondents for orders that pending hearing and determination of the main suit there be a temporary injunction restraining the 1st defendant/Respondent, his servants, agents and/or any other person claiming through him from evicting the Plaintiff/Applicant herein from Land Parcel No. North Ugenya/Masat/1578. Pending hearing and determination of the main suit there be a temporary injunction restraining the 1st Defendant/Respondent, his servants, agents and/or any other person claiming through him from interfering with the Plaintiff/Applicant's enjoyment of quiet and peaceful possession of the suit premises herein Land Parcels No. North Ugenya/Masat/1578 and North Ugenya/Masat/1578. Pending hearing and determination of the main suit there be a temporary injunction restraining the 2nd, 3rd and 4th Defendants/Respondents, their servants and/or agents from allowing and/or registering any dispositions of whatsoever nature affecting, altering or in way interfering with the existing land records in relation to the suit premises herein Land Parcel No. North Ugenya/Masat/1578 and North Ugenya/Masat/1539.

The application is based on grounds that:

- a) The Plaintiff/Applicant has been in lawful use and occupation of the suit premises herein all the while enjoying quiet and peaceful possession of the same.**
- b) The 1st Defendant/Respondent has issued the Plaintiff/Applicant with an eviction notice in relation to Land Parcel No. North Ugenya/Masat/1578 which is to be of immediate effect.**
- c) The Plaintiff/Applicant is the beneficial, lawful land/or rightful owner of the suit premises herein being both Land Parcel No. North Ugenya/Masat/1578 and North Ugenya/Masat/1539.**

In the supporting affidavit the applicant states that he was served with the eviction notice by the 1st defendant in respect of North Ugenya/Masat/1578 despite having been in possession of the same and parcel known as North Ugenya/Masat/1539. Since the 1960's and settled there in 1981 and 1971 respectively.

That the parcels were surveyed in 1971. The parcels are registered in the names of his brothers. The applicant states that his family has been in use and occupation of the land and that the respondents are aware.

The 1st Respondent does not live on the suit parcels of land and was registered without the applicant's knowledge. The applicant states that the manner the 1st Defendant was registered as proprietor is questionable as there was no succession cause.

In reply the 1st respondent states in the affidavit filed on 26/10.2020 that the parcel of land North Ugenya/Masat/1578 was registered in the name of his late father one Onjino Mganda in the year 1977 during adjudication and his family have been in occupation since then. That there is no allegation of fraud against his father. The applicant is not entitled to the land as he is not a dependant of the deceased Onjino Mganda. He disputes the allegation that the applicant is a step child of his grandfather or a step-brother of his father.

The applicant invaded the 2nd Respondent's parcel of land while the 1st respondent was away from the village and constructed a home. Despite request to vacate he has refused.

The 2nd Respondent states in the replying affidavit of Vincent Oluoch that the application lacks basis because the orders sought against the 2nd Respondent can't issue as he has no mandate to register transfers.

I have considered the application, replying affidavits rival submissions and do find that the applicant has satisfied the court on a prima facie basis that he is in possession of the suit parcels of land and has been in possession for a long period of time and therefore his case is likely to succeed.

Secondly, I do find that the applicant has constructed a home on the parcel of land and lives there with family hence if the orders sought are not granted, he is likely to suffer irreparable loss because he will be evicted if an injunction is not granted, the balance of convenience tilts towards granting the orders sought as he is likely to be more inconvenienced if the orders are not granted as he will be evicted.

The upshot of the above is that I do grant orders that pending hearing and determination of the main suit there be a temporary injunction restraining the 1st defendant/Respondent, his servants, agents and/or any other person claiming through him from evicting the Plaintiff/Applicant herein from Land Parcel No. North Ugenya/Masat/1578.

Pending hearing and determination of the main suit there be a temporary injunction restraining the 1st Defendant/Respondent, his servants, agents and/or any other person claiming through him from interfering with the Plaintiff/Applicant's enjoyment of quiet and peaceful possession of the suit premises herein Land Parcels No. North Ugenya/Masat/1578 and North Ugenya/Masat/1578.

Pending hearing and determination of the main suit there be a temporary injunction restraining the 2nd, 3rd and 4th Defendants/Respondents, their servants and/or agents from allowing and/or registering any dispositions of whatsoever nature affecting, altering or in way interfering with the existing land records in relation to the suit premises herein Land Parcel No. North Ugenya/Masat/1578 and North Ugenya/Masat/1539. Costs in the cause.

DATED AT KISUMU THIS 4TH DAY OF FEBRUARY, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE