REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 45 OF 2020

PHILIP ODUOR OCHIENG

(Suing as the legal representative and administrator of the estate of the late

HENRY MICHAEL OCHIENG).....PLAINTIFF

VERSUS

HEZRON KIMELI CHERUIYOT.....1ST DEFENDANT

THE COUNTY LAND REGISTRAR, NYANDO.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING

Before this Court are two applications. The first application is by the Plaintiff/Applicant's vide the Notice of Motion dated 6th May 2020 and filed on 20th July 2020. The same is filed under certificate of urgency and premised on Sections 1A, 1B & 3A of the Civil Procedure Act, Order 40 Rule 1 & 2, Order 50 Rule 1 of the Civil Procedure Rules 2010 and prays for Orders that pending the hearing and determination of this Suit, the Honourable Court be pleased to grant an order of temporary injunction restraining the 1st Defendant/Respondent whether acting by himself, his agents, officers, servants or otherwise from trespassing or remaining upon, wasting, constructing on, ploughing, selling, alienating or otherwise interfering or in any way dealing with the Plaintiff's/Applicant's land parcel number **KISUMU/FORT-TERNAN/488, 491, 492 and 494.** In the alternative, the Honourable Court be pleased to place a restriction/inhibition on L.R Parcel known as **KISUMU/FORT-TERNAN/488** pending the hearing and determination of this suit. That the costs of this application be provided for.

The application is supported by the plaintiff/applicant's affidavit sworn on 6th May 2020 and filed on 20th July 2020. The import of the affidavit is that the plaintiff/applicant has brought this suit and the application in his capacity as the administrator of the late Henry Ochieng Obiero who is his father and the first lawful registered proprietor of all the parcels of land known as KISUMU/FORT-TENAN/488, 491, 492 and 494

That his late father, being a senior civil servant in 1967, acquired the suit properties (whose mother title was KISUMU/FORT TENAN/233**)** through a loan from the Government Trustees & Settlement scheme and which loan he paid off and subsequently secured the titles of the suit properties in his name.

In late 2019, the plaintiff noticed that third parties had trespassed in the suit parcels and were partially ploughing and also grazing thereon. The plaintiff reported the matter to the local assistant chief on the advice of his father who was at the time very elderly (over 90 years) and unwell. Upon being summoned by the chief, the 3rd parties stated that the permission to plough and graze on the suit property was granted to them by the first defendant who claimed to be the owner thereof. The plaintiff's father died in early February 2020 before the matter could be resolved.

On the advice of his advocates on record, the plaintiff got certified copies of the register of all the parcels and discovered that the 1st defendant was registered as the owner of **KISUMU/FORT-TERNAN/488** and which registration is unlawful illegal and fraudulent. The same was effected with the 1st defendant in collaboration and conspiracy with unscrupulous employees of the 2nd defendant in an illegal and fraudulent manner against the rules of natural justice and the relevant land laws.

That after the death of the applicant's father, the 1st defendant has continued with his acts of trespass and engaged people who maliciously cut down exotic and indigenous trees which were planted on the suit properties. That the trees were valued at Kshs. 3,439,800.00/ by the Kenya Forest Service.

That in 1999, the applicant's deceased father and the 1st defendant had entered into an agreement for the sale of **KISUMU/FORT-TENAN/068/491, 068/492 and 068/498** totaling to 80 acres as per the sale agreement. The agreed purchase price was Kshs. 4,400,000/- but the 1st defendant only paid Kshs. 1,300,00/.

That the sale agreement failed as the entire consideration did not pass as expected. Further, the agreement provided that it would be completed within six months from the date of signing (being 8/02/1999) after which it shall be deemed null and void.

That the applicant knows of his own knowledge that his deceased father did not sell the parcel **KISUMU/ FORT-TENAN /488** to the 1st defendant and that his late father personally informed him that he never attended any land board meeting with the 1st Defendant to grant him permission to take over the suit parcel of land and/or signed a transfer of land to him.

That the applicant's family has been in exclusive possession, control and use of the said parcels of land for over 50 years and their rights to own and peacefully occupy/use the properties have been infringed upon by the respondents and unless restrained they will suffer irreparable loss and damage as the 1st respondent will continue erecting permanent structures on the suit property and proceed to cause further damage to the sensitive eco system/environment which cannot be recovered and/or be regained during our lifetime.

1ST RESPONDENT'S CASE

The Application has been opposed by the 1st defendant/respondent vide his replying affidavit dated 13th August 2020 and filed on 14th August 2020. It is the 1st defendant/respondent's case that;

That he has known Henry Michael Ochieng Obiero (now deceased) since 1991 at a time when he was disposing his parcels of land through sale; and that on or about March 1992, they agreed with the deceased on the purchase of **KISUMU/FORT TERNAN/488** at Kshs. 50,000/- per acre, and he paid an initial payment of Kshs. 100,000/- as per the agreement.

That a month later, he gave the deceased a further Kshs. 100,000/- and further completed payment in the following year in 1993 as per the annexed receipts by the deceased marked as HK-1.

Thereafter, the deceased transferred the title for **KISUMU/FORT TERNAN/488** into the 1st Respondent's name. In 1999, he entered into a formal agreement with the deceased for the purchase of parcels **KISUMU/FORT TERNAN/491,492,493,495,496,497** but later downscaled to **KISUMU/FORT TERNAN/491,492,493** as per the sale agreement dated 2nd February 2002 annexed and marked HK-2.

That the respondent completed payments for the said parcels toward the end of the year 2002 or thereabout after which the deceased signed the transfer of the parcels of land (*as per the transfers marked HK-3*) and the deceased together with the 1st respondent obtained the consent of the land control board (*annexed as HK-4*)

The sole reason why parcels **KISUMU/FORT TERNAN/491,492,494** are still in the deceased's name is the fact that the deceased having been ill for a long time passed on before change of ownership had taken place (*as per annexed copy of correspondence marked HK-5*).

That it is in fact the applicant who has denied the deceased peaceful use of his properties and has been severally warned by the deceased to desist from the same (*as per annexed applicant's correspondence with the deceased marled HK-6*)'.

THE APPLICANT'S FURTHER AFFIDAVIT

The applicant filed a further supporting affidavit sworn on 31st August 2020 and filed on 1st September 2020, (in response to the 1st respondent's replying affidavit) in which he states that in respect to the alleged sale of **KISUMU/FORT TERNAN/488,** that the respondent has not annexed any sale agreement, any consent and/or transfer of land document used to acquire the said parcel. The applicant has further denied that the respondent paid his late father any money and that the receipts annexed and marked HK-1 are forgeries to try and cover up for their illegal act, the signatures thereon being at variance with the deceased's signature.

That the deceased was a very meticulous person who documented all his transactions and could not have sold 26.4 HA of land through consensus as imagined by the Defendant. In respect to properties **KISUMU/FORT TERNAN/491, 492 and 494**, the sale agreement in respect fell through and was rescinded by both parties and the documents annexed as HK 2-4 are forgeries.

That Samuel Onyango & Company Advocates was registered in 2003 and could not have been in existence in 2002 when he allegedly drafted the sale agreement. Further, the transfer of land forms marked HK-3 are new forms that came into force under the new Land Registration Act 2012 and Land Act 2012, and which acts were not in force in 2002 when the transfer was allegedly drafted.

That it is inconceivable that during the first agreement in 1999, the value of the three parcels were Kshs. 4,400,000/- yet in the agreement dated 2002 (3 years later), the price was Kshs. 520,000/- yet land appreciates in value over time. The defendant cannot claim **Kisumu/Fort Ternan/491, 492 and 494** based on forged documents.

That after filing the suit, the first defendant has aggressively started fencing off **Kisumu/Fort Ternan/491** as per the photos annexed and marked 'POO-1'and which activity was reported at Koru Police Station vide OB/16/11/08/2020.

That it is now over 2 years from 1999 and the defendant did not sue the deceased claiming parcels **KISUMU/FORT TERNAN/491, 492 and 494**, and as such, his claim over the same is time barred.

That it is not true that the deceased ailed for a long period of time, as he was a strong healthy man and only ailed for one year before he passed on in February 2020 at the age of 94 years.

That the applicant never communicated with his father through written correspondence and the correspondence marked as annexure 'HK-6' are forgeries.

When the matter came up for hearing on 02/09/2020, counsel appearing for the 2nd and 3rd defendants/respondents stated that they are not opposed to the application. The Court also granted prayer 2 of the application and granted the respondent leave to file any response to the further affidavit.

Subsequently, the 1st defendant/respondent filed an affidavit on 1st December 2020 in response to the applicant's further affidavit dated 31st August 2020., in which affidavit he states that the sale agreement in respect of parcel number **KISUMU/FORT-TERNAN/488** between the respondent and the applicant's late father has been misplaced and efforts to trace the same has been futile, and that the copy of the green card in his favour is an indication that the sale and transfer process were carried out in accordance with the law. The allegation of forgery is a matter to be litigated upon at the hearing of the main suit. That the respondent was not in a position to establish whether or not the firm of S.M ONYANGO/ SAMUEL ONYANGO & CO. ADVOCATES was registered and had complied with the relevant regulating body; and was also not in a position to identify the anomalies in the transfer forms as they did not originate from himself.That sale agreement dated 8th February 1999 referred to by the applicant was scaled down/revoked by the sale agreement dated 2nd February 2002, hence the said agreement dated 8th February 1999 is irrelevant to this suit. That the applicant misdirected the Court into obtaining the temporary injunction orders since it is the respondent who has been on the suit property since 2002 and that he continues to suffer irreparable loss as the order has kept him off his land parcels which he has been irking a living for over eighteen years.

PLAINTIFF/APPLICANT'S SUBMISSIONS

The Plaintiff/Applicant filed submissions on 19th January 2021 in which they have submitted that the principles for granting an interlocutory injunction are set out in the celebrated cases of ***Giella v Cassman Brown & Co. Ltd (1973) EA.*** The applicant also relied on the case of ***Mrao Limited v First American Bank of Kenya & 2 Others (2003) eKLR*** on the establishing of a prima facie case by the applicant.

A prima facie case with high chances of success has been shown as the Plaintiff/Applicant has proven that the parcels **KISUMU/FORT-TERNAN/ 491,492 and 494** are still registered in the name of the deceased, Henry Michael Ochieng Obiero and that the 1st Defendant/Respondent has not denied or rebutted the alleged activities by him in the suit properties; and which activities are without any colour of right or basis. On this point, the applicant relied on the cases of ***Olympic Sports House Limited v School Equipment Centre Ltd. (2012) eKLR*** and ***Naftali Ruthi Kinyua v Patrick Thuita Gathure & Another (2015) eKLR.***

He contends that Section 26 of the Land Registration Act, No.3 of 2012 provides that a certificate of title shall be held to be conclusive evidence of proprietorship thereof. That with regard to **KISUMU/FORT-TERNAN/488,** which is registered in the name of the 1st defendant/respondent, that the defendant has deliberately forged documents to try to prove his ownership of the suit parcel and that he continues to trespass on the same as he has leased out the property to third parties and an injunction ought to be issued to protect the property. That the activities by the 1st defendant/respondent on the suit properties which include actively cutting down indigenous trees and selling the same, ploughing and leasing them out are greatly devaluing the property, the general environment and degrading the land. That such damages cannot be quantified and be compensated for in terms of damages as they have long term negative effects on the property.

The applicant has urged the Court to apply the new principle that has emerged in law where the Honourable Court is called upon **to take a cause of action which appears to carry a lower risk of injustice if it should turn out to have been wrong as espoused in the case** of ***Suleiman v Amboseli Resort Ltd (2004) 2KLR 589***; and find in favour of the applicant as the defendant has no legal basis /claim over the suit properties.

He argues that the 1st Respondent's submission that damages could be established/quantified and paid in the circumstances does not hold water. That once prima facie case has been established, the Court need not consider the limb on irreparable loss. The applicant relied on the cases of ***JM Gichanga v Coperation best of Kenya Ltd (2005) eKLR*** and ***Jay Super Power Cash and Carry Ltd v Nairobi City Council & 2 Others CA 111/2002.*** That the balance of convenience is in favour of the plaintiff as he would suffer great loss should the orders sought not be granted. That the Court can alternatively place a restriction on the parcel **KISUMU/FORT-TERNAN/488** on the basis of Section 68 of the Land Registration Act.

1ST DEFENDANT/RESPONDENT'S SUBMISSIONS

The same were filed on 1st December 2020. The 1st defendant/respondent has submitted that that the respondent is a lawful and beneficial owner to land parcels **KISUMU/FORT-TERNAN/491,492 and 494** vide the sale agreement dated 2nd February 2002 and has been on the suit properties for over 18 years as evidenced by the diverse agricultural activities and the trees planted thereon which are over eighteen years. The respondent is the registered owner of parcel **KISUMU/FORT-TERNAN/488,** has leased them out to 3rd parties, and has been in possession for over 27 years as illustrated by the green card. The alleged forgery in respect to the registration of the same by the applicant ought to be proved as provided for in the law. The Respondent has relied on the cases of ***Elias Njue Ireri v Kubu Benson Nderi & 3 Others [2019] eKLR, Vijay Morjaria v Nansingh Madhusingh Darbar & Another (2000) eKLR (Civil Appeal No. 106 of 2000), Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another [2005] 1 EA 334.***

No prima facie case has been demonstrated by the plaintiff/applicant as documentary evidence proves that the 1st respondent has been in occupation, utilization and possession of the suit land parcels; that the green card in respect of **KISUMU/FORT-TERNAN/488** is in favour of the 1st Respondent whereas the sale agreement dated 2nd February 2002 in respect to parcels **KISUMU/FORT-TERNAN/491,492 and**

494 establishes prima facie case in the 1st respondent's/ defendant's favour.

The plaintiff/applicant cannot suffer irreparable injury, and has not adequately demonstrated irreparable injuries that he will suffer if a temporary injunction is not granted as he does not have a legal or equitable right to the said parcels of land. The plaintiff has not adequately demonstrated irreparable injuries. The 1st defendant/respondent is the one to suffer irreparable injuries/loss and damage and especially to his agricultural plantation valued at Kshs. 34 million. He relied on the case of ***Pius Kipchirchir Kogo v Frank Kimeli Tenai (2018) eKLR***.

That this Court discharges the order dated 3rd September 2020as the order was issued on the basis of misrepresentation of facts by the plaintiff/applicant. On this, he relied on the case of ***Kenleb Cons Ltd v New Gatitu Service Station Ltd & Another (1990) eKLR. According to the applicant, t***he balance of convenience is in favour of the 1st respondent as he is the one who has been in possession of the suit properties for over 15 years and has been farming on the suit land parcels which is his main source of income.

THE SECOND APPLICATION

The 2nd application is dated 13th January 2021 and filed on 18th January 2021 and brought under Order 40 Rules 1,2 and 3 of the Civil Procedure and sections 3A and 63(e) of the Civil Procedure Act The 1st Defendant/ applicant, HEZRON KIMELI CHERUIYOT is seeking orders that that this Honourable Court be pleased to issue conservatory orders restraining the plaintiff/1st respondent from wasting the suit lands; **KISUMU/FORT-TERNAN/488,491,492 and 494** and further dealings onto the suit parcel of land pending hearing and determination of the instant application dated 6/05/2020 in this matter.

That this Honourable Court be pleased to issue an interim injunction order restraining the Respondents whether by themselves, their agents, servants and/or anyone acting on their behalf from alienating, disposing, invading, entering, trespassing or in any other manner interfering with the suit properties being land parcels; **KISUMU/FORT-TERNAN/488,491,492 and 494,** so as to preserve the suit properties pending hearing and determination of this Application. That costs of this application be provided for. The application is supported by the 1st defendant/applicant's affidavit sworn on 13th January 2021. The following grounds of the application can be deduced from the face of the application and the supporting affidavit;

That there is a pending application dated 6th May 2020 where the plaintiff had sought injunctive orders against the 1st defendant/applicant herein in respect of parcel numbers **KISUMU/FORT-TENAN/488, 491, 492 & 494**. On 3rd September 2020, the Court granted a temporary injunction restraining the 1st defendant/applicant herein from dealing in any way with the said parcels pending the hearing and determination of the application dated 6th May 2020, and which order the 1st defendant/applicant is diligently adhering to. That the plaintiff/respondent has moved into the suit premises and has commenced the process of re-demarcation of boundaries and destruction of trees with particular reference to land parcel number **KISUMU/FORT-TERNAN/488 *(****as per the attached bundle of pictures marked HCK-3*) with an intention of disposing off the suit properties; and that the said activities were reported by the applicant's farm workers at Koru Police Station vide OB NO. 11/23/12/2020 as per the annexure HCK-4.

If the plaintiff's respondent's illegal acts in respect of the suit properties which form the subject matter of the application dated 6/05/2020 are not sanctioned, irreparable loss will result to the applicant and the instant suit, being **KISUMU ELC NO. 45 OF 2020** will be greatly prejudiced and hampered and litigation in the same will be an exercise in futility. The Plaintiff respondent filed a replying affidavit on 26th January 2021 in opposition to the application and in which he states that;

He has not commenced the process of re-demarcation and destruction of trees in respect to parcel number **KISUMU/FORT-TERNAN/488** with the intention of fencing it off as alleged, and that it is the owner of parcel number **KISUMU/FORT-TERNAN/487,** one William Onywero Okello who has embarked on the process of fencing off his parcel of land and clearing the bushes therein as per his affidavit marked *POO-1*.

In the annexed affidavit by William Onywero Okello, he has deposed that he is the owner of **KISUMU/FORT-TERNAN/487** and has attached a copy of a title deed to that effect. That the photos annexed as HCK-3 to the application dated 13th January 2021 shows the fencing he did on his parcel of land and that he did not cut down trees, but only bushes and shrubs to enable him fence the same and that he has not in any way interfered with **KISUMU/FORT-TERNAN/488.**

It is the plaintiff/respondent's case that the application is wholly misconceived in law and should be dismissed *suo moto*. That it is illogical to request this Honourable Court to issue injunctive orders against the plaintiff whereas it had already issued injunctive orders as against the 1st defendant and that the orders issued on 3rd September 2020 should remain in place pending determination of the application dated 6th May 2020.

ANALYSIS AND DETERMINATION

Both applications are premised on Order 40 of the Civil Procedure Rules and are in respect of the same suit properties, being **KISUMU/FORT-TERNAN/488, 491,492 and 494.** Whereas the substantive prayer in the application dated 6th May 2020 by the plaintiff/applicant is that an injunctive order be issued in respect of the suit properties pending hearing and determination of this suit (prayer 3), the substantive prayer in the application dated 13th January 2021 is for conservatory orders in respect of the suit properties pending hearing and determination of the application dated 6th May 2020 (prayer 2).

It therefore automatically follows that a determination on the application dated 6th May 2020 will render the application dated 13th January 2021 impractical. In any event, the plaintiff in his replying affidavit to the application dated 13th January 2021 has indicated that the alleged activities which have prompted the filing of the application are being carried out on parcel no. **KISUMU/FORT-TERNAN/487,** which does

not form part of the suit properties herein and that allegation has not been countered by the 1st defendant in a further affidavit. For the above reasons, I will deal with the application dated 6th May 2020.

Order 40 Rule 1 of the Civil Procedure Rules provides for conditions to be met/satisfied by an applicant before an order of injunction can be granted. It provides;

1. Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

The applicant must also demonstrate the criteria set out in the case of ***Giella vs Cassman Brown Ltd (1973) EA 358.*** The criteria are;

a) The Applicant must establish that he has a prima facie case with probability of success.

b) That the Applicant will suffer irreparable loss which cannot be adequately compensated in any way or by an award of damages.

c) When the Court is in doubt, to decide the case on a balance of convenience.

Whether the suit properties are in danger of being wasted, damaged, or alienated by any party to the suit

It is the applicant's case that the activities by the 1st defendant/respondent on the suit properties which include actively cutting down indigenous trees and selling the same, ploughing and leasing them out are greatly devaluing the property, the general environment and degrading the land. The 1st defendant/respondent. The 1st defendant/respondent has on the other hand stated that he is in possession of the suit properties and has been farming thereon for over 15 years now, and has even planted trees which are more than 18 years old. In fact, he has even leased out the parcel number **KISUMU/FORT-TERNAN/488** to various third parties, with the lease agreements annexed to the respondent's affidavit sworn on 26th November 2020.

The applicant on the other hand has stated that their family has been in exclusive, possession, control and use of the said parcels for over 50 years.

I have noted that the defendant/respondent has not denied the allegation by the plaintiff/applicant that the respondent has maliciously cut down exotic and indigenous trees which were planted on the suit properties. The report dated 6th February 2020 by the Kenya Forest Service (annexure POO-6(a)) and which the respondent has not commented on, is an indication that indeed, there was cutting down of trees on the parcels **KISUMU/FORT-TERNAN/491,492 and 494.**

I have also noted that both the plaintiff and the 1st defendant have competing interests on the suit properties. Both are claiming ownership and possession of the suit properties. The Court is yet to make a finding as to who is the entitled owner of the suit properties. It is therefore likely that unless an injunctive order is issued, both parties are likely to carry out parallel activities on the suit properties as each one of them is claiming ownership. This will most likely amount to wasting and damaging of the suit property.

Whether the Applicant has established a prima facie case with probability of success.

In ***Mrao Ltd v. First American Bank of Kenya Ltd & 2 others (2003) KLR 125 (***referred to in the case of ***Wilfred Mutembei v Andrina Nkuene Njiru & 2 others [2020] eKLR)*** the court described prima-facie case as follows; -

> **"In civil cases it is a case which on the material presented to the Court or a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter'**

The Court should however be careful not to decide the disputed issues in finality but only to determine whether the applicants are deserving of the injunctive orders sought based on the criteria laid down in the case of ***Giella Vs Cassman Brown & Co. Ltd(supra).*** See the case of ***Wilfred Mutembei v Andrina Nkuene Njiru & 2 others [2020] eKLR***.

It is the plaintiff/applicant's case that the plaintiff's deceased father is the registered owner of parcels number **KISUMU/FORT-TERNAN/491,492 and 494.** This has been reflected on the title deeds and the green cards attached to the application. As to whether or not the 1st respondent is a beneficial owner of the suit properties on the basis of a sale agreement as averred is a matter to be delved in during trial and not at this point in time.

In respect of **KISUMU/FORT-TERNAN/488,** the copy of the green card thereof is in favour of the 1st respondent. The applicant has alleged fraud in the registration of the title in favour of the respondent. Again this is a matter to be delved in during the full trial. In respect of possession, both parties are claiming possession. The plaintiff/applicant is claiming possession for over 50 years whereas the respondent has claimed possession for over 18 years. That is also an issue to be delved in at full trial.

I therefore find that the applicant has established a prima facie case in respect of the parcels numbers **KISUMU/FORT-TERNAN/491,492 and 494.** In respect of **KISUMU/FORT-TERNAN/488,** prima facie case tends to be in favour of the 1st defendant/respondent.

That the Applicant will suffer irreparable loss which cannot be adequately compensated in any way or by an award of damages.

The centrality of substantial loss was discussed in the case of ***James Wangalwa & Another V Agnes Naliaka Cheseto [2012] eKLR*** in the following terms;

> **The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. … "…Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory."**

It is the Plaintiff/Applicants case that the Plaintiff/Applicant will suffer irreparable loss and damage if the 1st defendant is not restrained as their rights to own and peacefully occupy/use the properties will continue to be infringed upon by the defendant and further, that the defendant will proceed to erect permanent structures on the suit property and proceed to cause further damage to the sensitive ecosystem/environment which cannot be recovered and/or regained within our life time. The applicant has also claimed that they have been on the suit premises for over 50 years. On the other hand, the 1st defendant/respondent has indicated that he is the one to suffer irreparable loss as he is the one who has been on the suit property since 2002 and the order will keep him off his land parcels which he has been irking a living for over eighteen years.

Since both parties are claiming possession of the suit properties, this is one of the issues to be looked in to at the hearing, I am in doubt as to who between the parties is likely to suffer irreparable loss. I find that this is a matter in which the Court has to balance between the competing interests of the plaintiff and the 1st defendant in the suit properties, and in the circumstances I find that the fair thing to do would be for the Court to issue an order for status quo, restricting any of the parties from dealing with the suit properties, being **KISUMU/FORT-TERNAN/488, 491,492 and 494** in the land registry and on the ground.

The upshot of the above is that it is in the interest of justice that the Court issues, and I do hereby issue an order for status quo, restricting any of the parties from dealing with the property in the land registry and interfering with the status quo on the ground pending hearing and determination of the suit.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 30TH DAY OF JULY, 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