



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC. CASE NO. E042 OF 2021**

**PETER AGUKO ABOK.....PLAINTIFF/APPLICANT**

**VERSUS**

**AGNESS AUMA OKELLO.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**CALLEB OGINGA RANDIKI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**JAMES OTIENO.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

The application before court is dated 21/7/2021 and filed on 27/7/2021. It seeks an order of **temporary injunction** be issued; **Directed at the defendants/respondents, their agents, employees, servants or assigns and or any person whatsoever acting on their behalf restraining them from trespassing into, occupying, accumulating any materials therein whether for personal use or business purposes, taking possession of, leasing or otherwise in any manner whatsoever interfering with the land parcel No. KISUMU/WATHOREGO/3624 pending the hearing and determination of the present suit. The cost of this application be provided for.**

The application is based on grounds that **the applicant is the registered proprietor of the Land Parcel No. KISUMU/WATHOREGO/3624 measuring approximately 0.44 Ha. (hereinafter referred to as the suit property). The applicant states that sometimes on or about the 14<sup>th</sup> of July 2021, the Respondents began to illegally and unlawfully accumulate timber and other assorted materials on a portion of the suit property with the intention of carrying on the business of hardware. This was done without the authority of the applicant herein.**

**The applicant has been in occupation of the suit property peacefully without any interference until the Respondents' illegal, callus and provoking actions.**

**The applicant is therefore apprehensive that unless stopped by this honourable court, the respondents are intended on interfering with his legal occupation, title and right to property an incident that is tailored to revoke him. The applicant applies to court to safeguard his proprietary rights pending the hearing of the present application and the subject suit. It is in the interest of justice that the Honourable court grants the orders sought to safeguard the substratum of this suit.**

**The Honourable Court is espoused with wide and unfettered discretion to grant the orders sought/or make any further orders as it deems fit flowing from such proceedings to safe guard against unfairness or prejudice in the wider interest of justice.**

In the supporting affidavit the applicant states that **he is the registered proprietor of the suit property being KISUMU/WATHOREGO/3624 measuring approximately 0.44Ha. That he stays on the suit property and he has extensively developed the same. The developments in the suit property consist of a storey building consisting of dwelling flats. That sometimes on the 14<sup>th</sup> day of July 2021, he realized that someone had trespassed on to the suit property and bean to accumulate timber and other assorted materials on a portion thereof without his permission. When the applicant probed further, he got information that the 2<sup>nd</sup> Respondent was the owner of the said materials. There was an indication by the 2<sup>nd</sup> Respondent and his agents that the said trespass was with the permission of the 1<sup>st</sup> Respondent who had leased the portion of the applicant's property to the 2<sup>nd</sup> Respondent without his consent. That the Respondents are mere trespassers and do not have any iota of right over the applicant's property for the reasons that the applicant purchased his parcel of land being KISUMU/WATHOREGO/3624 from one ROSEBELA ADUDA OREGI, initially Kisumu/Wathorego/2 measuring approximately 0.47Ha.**

**That his parcel being KISUMU/WATHOREGO/3624 is a subdivision of KISUMU/WATHOREGO/2, where the said Rosebela**

**Aduda Orege remained with area measuring approximately 0.03 Ha. The said Rosebela Aduda Orege has no problems with the applicant to date. The Respondents are therefore busy bodies with the intention of vexing and provoking him.**

In the replying affidavit of Agnes Auma Okello the 1<sup>st</sup> Defendant herein, she states that it is not in dispute that the plaintiff is the owner of land parcel number **KISUMU/WATHOREGO/3624** whereon he has erected a storey building and the 1<sup>st</sup> respondent know that upon the plaintiff's purchase of the land parcel number **KISUMU/WATHOREGO/3624**, he confirmed the boundaries of the said parcel and fences all his land using iron sheets as demonstrated in the images attached as annexure PAA/2 in his supporting affidavit. The residential property erected on land parcel number **KISUMU/WATHOREGO/3624** was erected sometimes in the year 2016 and since then, the Plaintiff has never laid claim over the disputed portion of what was land parcel number **KISUMU/WATHOREGO/1** now subdivided. The portion of the land the Plaintiff claims to be his is a portion of what was land parcel number **KISUMU/WATHOREGO/1** now subdivided and it is the same portion where the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants presently occupy. This portion is not and has never been a part of land parcel number **KISUMU/WATHOREGO/3624** as claimed by the plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not need the permission of the plaintiff to occupy the said parcel of land. That it is apparent that the plaintiff who ought to know the boundaries of his parcel feign knowledge of the same and the 1<sup>st</sup> Respondent is informed by her advocate on record, which information she believes to be true that there is obviously a boundary dispute between these parcels of land and the same can only be resolved by the Land Registrar in liaison with the Land Surveyor and not this Honourable Court, which now lacks jurisdiction by virtue of the provisions of Section 18 of the Land Registration Act. The land parcel number **KISUMU/WATHOREGO/3624** was subdivided from land parcel number **KISUMU/WATHOREGO/2** which bordered land parcel number **KISUMU/WATHOREGO/1**.

She further states that she is convinced that it is this confusion that led the plaintiff to claim what is reflected as part B on the mutation forms (that is the land parcel number **KISUMU/WATHOREGO/5658**) as part of his land. That this is therefore a boundary dispute that can only be resolved by the Land Registrar in liaison with the Land Surveyor and not this Honourable Court, which now lacks jurisdiction by virtue of the provisions of section 18 of the Land Registration Act.

I have considered the evidence on record in the affidavits and do find that the applicant is the registered proprietor of **KISUMU/WATHOREGO/3624** which borders **KISUMU/WATHOREGO/5657** and **KISUMU/WATHOREGO/5658** that were subdivided from **KISUMU/WATHOREGO/1** that bordered **KISUMU/WATHOREGO/2** from which **KISUMU/WATHOREGO/3624** was created. The 1<sup>st</sup> Defendant was the registered owner of **KISUMU/WATHOREGO/1** that was subdivided into 3 parcels and that she sold a portion of the land to Beth Achieng Omolo who was registered as proprietor of **KISUMU/WATHOREGO/5658** but she occupies **KISUMU/WATHOREGO/5657**. That the portion being claimed by the plaintiff is **KISUMU/WATHOREGO/5658** that belongs to the Plaintiff.

The circumstances of this case are that the parcel the plaintiff and 1<sup>st</sup> Defendant are disputing over is either **KISUMU/WATHOREGO/3624** or **KISUMU/WATHOREGO/5658**. The available evidence cannot assist the court to determine whether the defendants have trespassed into the plaintiff's land **KISUMU/WATHOREGO/3624**.

I do order that the County Land Registrar Kisumu County accompanied with the Regional Surveyor Kisumu County to visit the two parcels of land and find out the extend of **KISUMU/WATHOREGO/5658**, **KISUMU/WATHOREGO/5657** and **KISUMU/WATHOREGO/3624** and find out who occupies the 3 parcels of land namely **KISUMU/WATHOREGO/3624** This should be done within 30 days from the date of the ruling and a report be filed within the same period of time. In the meantime, the status quo to be maintained.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 24<sup>TH</sup> DAY OF NOVEMBER, 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 15<sup>th</sup> March 2020.*

**ANTONY OMBWAYO**

**JUDGE**