



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**ELC CASE NO. 7 OF 2015**

**GEORGE OKEYO MUCHE (Suing as the administrator  
and**

**legal representative of the estate of MARGARET ATHIENO ONGINJO .....  
APPLICANT**

**VERSUS**

**HESBON OCHIENG MARAM.....  
RESPONDENT**

**RULING**

1. **George Okeyo Muche**, the Applicant, filed the notice of Motion dated 21st January 2015 seeking for injunction orders to restrain **Hesbon Ochieng Maram**, the Respondent, from interfering with his use of **Kisumu/Korando/4507** pending the hearing and determination of the suit among other prayers. The Applicant relies on three grounds on the notice of Motion and his supporting and further affidavits sworn on 21st January 2015 and on 1st July 2015 respectively.
2. The Respondent opposes the application through the replying affidavit sworn on 20th March 2015.
3. The application came up for hearing on 28th October 2015 when Mr. Ariko and M/S Otieno Advocates for the Applicant and Respondent respectively made their rival submissions.
4. The following are the main issues for the court's determination:
  - a) Whether the Applicant has established a prima facie case with a probability of success.
  - b) Whether the prayer of injunction sought should issue.
  - c) Who pays the costs.
5. The court has carefully considered the grounds on the application, the evidence in the supporting, replying and further affidavits and the submissions by counsel and come to the following determination.
  - a) That land parcel **Kisumu/Korando/4507**, the suit land, was registered in the names of **Margaret Athieno Onginjo** on the 28th June 1999. The said **Margaret Athieno Onginjo** died on 31st January 2005 and the Applicant has obtained the grant ad litem in Kisumu Probate and Administration Cause No.930 of 2014 to file suit for the estate.
  - b) That Section 24 and 25 of the Land Registration Act, sets out the rights and privileges of a registered proprietor of a land and includes the rights to use and quiet possession. Though the Respondent has in his statement of defence and replying affidavit challenged the

legality of the title obtained by the late **Margaret Athieno Onginjo**, this court is obligated under Section 26 of the Land Registration Act to take the person named as the proprietor in the Certificate of title issued by the Land Registrar as the indefeasible owner of such land until the title is successfully challenged.

c) That as the plaintiff has been clothed with capacity to sue for the estate of **Margaret Athieno Onginjo**, who is indefeasible owner of the suit land as evidenced by the Certificate of title, the court find that he has established a prima facie case with a probability of success as required in the case of **Giella – V – Cassman Brown Company Limited** [1973] E.A 358 and an order of injunction should therefore issue to stop the Respondent from using the suit land.

6. The Applicant's application dated 21st January 2015 is found meritorious and is hereby, allowed in terms of prayer C with costs in the cause.

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

Dated and delivered this **10th day of February 2016.**

In presence of;

APPLICANT Present

RESPONDENT present

COUNSEL Mr Ariko for Nyanga for Applicant

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**10/2/2016**

10/2/2016

s.m. Kibunja J

Oyugi court assistant

Parties present

Mr Anyul for Nyanga for plaintiff/Applicant

Defendant: My advocate has not come

Court: Ruling delivered in open court in presence of both parties and Mr Ariko for Nyanga for Plaintiff/Applicant.

**SM. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**10/2/2016**