



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

ENVIRONMENT & LAND COURT

LAND CASE NO.139 OF 2013

VINCENT SAMSON

ODUOR.....APPLICANT

VERSUS

DISMAL OTIENO

OGUYA.....RESPONDENT

RULING

1. **Dismas Otieno Oguya**, the Applicant, filed the Notice of Motion under certificate of urgency dated 24th November 2014 for order of temporary injunction against – **Vincent Samson Oduor**, the Respondent, over land parcels **North Ugenya/Sega/2321 and 2322** pending hearing and determination of the suit. The application is based on the five grounds on the notice of motion and supporting affidavit of Dismas Otieno Oguya sworn on the 24th November 2014.
2. The application is opposed by the Respondent through the replying affidavit indicated to be sworn on 5th November 2014 but filed on 8th December 2014.
3. That when the application came up for hearing on 4th June 2015, the Respondent informed the court that he had already filed written submissions. The court has seen the copy of the undated submissions filed on 10th February 2015. The Applicant's counsel then requested for time to file written submissions. The counsel subsequently filed written submissions dated 12th September 2015 and filed on 30th September 2015.
4. The main issue for determination is whether the Applicant has established a case for issuance of injunction orders at this interlocutory stage. Secondly, which party pays costs.
5. The court has considered the grounds on the notice of motion, the affidavit evidence by both parties, pleadings and submissions filed by parties and come to the following conclusions:

(a) That the suit before this court was commenced through the plaint dated 5th June 2013 filed by Vincent Samson Oduor, the Respondent. The Respondent avers that he is the registered proprietor of North Ugenya/Sega/2066 since 11th September 2012 and exhibited copy of the title deed and certificate of official search.

(b) That upon the Applicant being served with the suit papers, he filed a statement of defence dated 6th September 2013 in which he prays for the Respondent's suit to be dismissed with costs. The statement of defence do not contain a counter claim against the Respondent upon which the current application could be said to emanate from.

(c) That in the absence of a suit on which the Applicant's notice of motion dated 24th November 2014, the Applicant cannot establish a prima facie case against the

Respondent that would require temporary injunction orders to be issued pending its hearing and determination. The suit before the court is the one against the Applicant only. The celebrated case of Giella – V – Cassman Brown Ltd {1973} E.A 357 may not have relevance in that case as the Applicant has no pending claim against the Respondent, that could be the basis of the application.

6. That for the reasons set out above the application dated 24th November 2014 has no merit and is dismissed with costs to the Respondent/Plaintiff.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

5/11/2015

Dated and delivered this 5th day of November 2015

in presence of

Applicant Present

Respondent present

Counsel N/A

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

5/11/2015

5/11/2015

S.M. Kibunja j.

Oyugi Court clerk

Parties present

Defendant: My advocate has not come.

Court: Ruling dated and delivered in open court in presence of both parties.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

5/11/2015