



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 38 OF 2018 (OS)

IN THE MATTER OF THE LAND ACT 2012

AND

IN THE MATTER OF SECTIONS 24, 34, 35, 50, 52, 57, 58, 64, 65, 77 AND 79

OF THE REGISTRATION OF TITLES ACT LAWS OF KENYA

AND

IN THE MATTER OF SECTIONS 34, 38, 40, 41, 42, 45, 46, 47 AND 52 OF

THE LAW OF SUCCESSION ACT

AND

IN THE MATTER OF SECTIONS 18 AND 38 OF THE LIMITATION OF

ACTIONS ACT CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR ADVERSE POSSESSION

OF REGISTERED LAND TITLE NO. KISUMU/KORANDO/2128

AND

ANY OTHER ENABLING PROVISIONS OF THE LAW

AND

BETWEEN

MICHAEL OTIENO NYAGUTI.....APPLICANT

AND

PHYLLIS EUNICE ANYANGO OUKO.....1ST RESPONDENT

JOHN E. OUKO RERU.....2ND RESPONDENT

REGISTRAR OF LAND.....3RD RESPONDENT

RULING

1. Michael Otieno Nyaguti, the Applicant, seeks through the notice of motion dated 1st August 2018 for the following orders;

i. Spent.

ii. **The Applicant be allowed to participate in the proceedings on behalf of Florence Ambuso Lungalia and John Phillip Kamuga on the basis of the Power of Attorney.**

iii. **Temporary injunction pending the hearing and determination of the application.**

iv. **Permanent (sic) injunction pending the hearing and determination of the suit commenced through Originating Summons.**

11. Spent.

12. **Any other order the court deems just and appropriate.**

13. **Costs.**

2. The application is based on the ten (10) grounds marked (i) to (x) on its face and is supported by the affidavits of the Applicant, Florence Ambuso Lungalia and John Phillip Kamuga all sworn on the 1st August 2018.

3. The application is opposed by Phyllis Eunice Anyango, the 1st Respondent, through her replying affidavit sworn on the 1st October 2018.

4. The application came up for hearing on the 23rd January 2019 when the Applicant and Mr. Oguso advocate, made oral rival submissions.

5. The Court has carefully considered the grounds on the motion, affidavit evidence, oral submissions by the Applicant and Counsel for the 1st Respondent and concluded as follows;

a) That the Applicant seeks for the Court's leave to file and prosecute this suit on the strength of the power of attorney allegedly donated by Florence Ambuso Lungalia and John Phillip Kamuga (minor). That the power of attorney attached and dated the 1st August 2018 does not appear to have been filed as required under the **Registration of Documents Act Chapter 285 of the Laws of Kenya**. That for that reason the Applicant's application for the Court's leave or permission to proceed with the suit for the two named persons based on unregistered power of attorney cannot be granted.

b) That noting that John Phillip Kamuga is reportedly a minor aged about 16 years, the Applicant may consider affecting the necessary amendments to the pleadings filed so as to continue with the originating summons as a friend of the minor in accordance with **Order 32 of the Civil Procedure Rules**.

c) That until the locus of the Applicant is settled, none of the prayers sought in the notice of motion can be granted.

d) That the matter will be placed for mention to confirm whether the Applicant, or the persons he sued on behalf, will have settled the issue of representation and further directions.

6. That in view of the foregoing the notice of motion dated the 1st August 2018 is struck out with no order as to costs.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 3RD DAY OF APRIL 2019

In the presence of:

Applicant Present

Respondents Absent

Counsel None

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE