



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 33 OF 2018 (O.S)

IN THE MATTER OF REGISTERED LAND ACT CAP 300 (REPEALED)

AND

IN THE MATTER OF LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF SECTIONS 7, 17 AND 38 OF THE LIMITATION OF ACTIONS ACT CAP 22

AND

IN THE MATTER OF LAND PARCEL NUMBER EAST GEM/RAMULA/206

AND

IN THE MATTER OF ADVERSE POSSESSION OF LAND PARCEL NO. EAST GEM/RAMULA/206

AND

IN THE MATTER OF JOAN LUDIA SAKA, DENNIS OCHIENG SAKA AND JASSON WILFRED MUMBO SAKA

AND

IN THE MATTER OF ORDER 37 RULE 7 OF THE CIVIL PROCEDURE RULES

BETWEEN

JOAN LUDIA SAKA.....1ST PLAINTIFF

DENNIS OCHIEG' SAKA.....2ND PLAINTIFF

JASSON WILFRED MUMBO SAKA.....3RD PLAINTIFF

VERSUS

PAMELA GETRUDE OTIENO.....1ST DEFENDANT

HABAKUK ONYANGO ABOGNO.....2ND DEFENDANT

ESTATE OF ABUOR NYASEME alias AGER NYASEME.....3RD DEFENDANT

RULING

1. That vide the Amended notice of motion dated the 5th February 2019, the Plaintiffs seeks for a temporary injunction against the Defendants *“individually or collectively, their agents, servants, and or by whatever name called from evicting the Plaintiffs/Applicants*

and other beneficiaries of the estate of Abuor Nyaseme alias Ager Nyaseme (deceased) from the land parcel number East Gem/Ramula/206” pending the hearing and determination of the suit, commenced through the originating summons dated the 6th July 2018. The application is based on the nine (9) grounds marked (a) to (i) on its face and supported by the affidavit sworn by Joan Rudia Saka, the 1st Plaintiff, on the 5th February 2019.

2. The application is opposed by the 2nd Defendant through his replying affidavit sworn on the 11th June 2019.

3. The application came up for hearing on the 31st January 2019 and parties agreed to file and exchange written submissions. The learned Counsel for the Plaintiffs, 2nd and 1st defendants filed their submissions dated the 31st May 2019, 10th June 2019 and 17th June 2019 respectively.

4. The following are the issues for the court’s determinations;

a) Whether the Plaintiffs have made a prima facie case for temporary injunction order to issue at this interlocutory stage.

b) Who pays the costs.

5. The Court has carefully considered the grounds on the Amended motion; affidavit evidence by the Plaintiffs and the 2nd Defendant; the written submissions by the three learned Counsel for the parties, the pleadings and come to the following findings;

a) That indeed the Plaintiffs are in occupation of the suit land or a portion thereof, and that the main prayer in their originating summons dated the 6th July 2018, and filed in court on the 10th July 2018 is for the land to be registered with them under adverse possession. That the 2nd Defendant has conceded in his replying affidavit that the Plaintiffs are occupying about one acre of the suit land, and that he has made an offer to transfer that portion to them.

b) That the finding in (a) above leads the court to find that the Plaintiffs have made a case for temporary injunction to issue as prayed pending the hearing and determination of the suit to safe guard their interest on the land.

c) The Plaintiffs costs in the application will abide the outcome of the originating summons.

6. That in view of the foregoing, the court finds, merit in the Plaintiff’s notice of motion dated the 5th February 2019 and prayer 1 is granted with costs in the cause.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 26TH DAY OF JULY, 2019

In the presence of:

Plaintiffs Absent

Defendants Absent

Counsel Ms. Oroni for Kirenga for Plaintiffs

Mr. Ayayu for Orwa for defendant

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE