



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.173 of 2013

ALBERT AYIEKO AGWANDA.....1ST PLAINTIFF

ERASTUS SEDA AKEYO.....2ND PLAINTIFF

VERSUS

LILIAN AWUOR OGALO1ST DEFENDANT

SILAS OLILO OMWA.....2ND DEFENDANT

CALEB OCHIAMBO OGUYA.....3RD DEFENDANT

PAMELA ACHIENG ODOLO.....4TH DEFENDANT

CHAIRMAN LAND CONTROL BOARD.....5TH DEFENDANT

DISTRICT LAND REGISTRAR KISUMU.....6TH DEFENDANT

ATTORNEY GENERAL.....7TH DEFENDANT

RULING

1. Albert Ayieko Agwanda and Erastus Seda Akeyo, the Plaintiffs, seeks vide notice of motion dated 3rd July 2013 for a temporary injunction restraining the Defendants whether by themselves, their agents, servants and employees from entering, erecting structures or in any way dealing with land parcel No. Kisumu/Nyahera/1601, which was further subdivided into Kisumu/Nyahera/2529, which belongs to the 1st Plaintiff, and Kisumu/Nyahera/2528 and 2527 until this suit is heard and determined. The application is based on the three grounds on the notice of motion and is supported by the affidavits sworn by the 1st and 2nd Plaintiffs on the 2nd June 2013, and further affidavit of the 1st Plaintiff sworn on 31st March 2014 and 2nd March 2015. The Plaintiffs have named **Lilian Awour Ogalo, Silas Olilo Omwa, Caleb Odhiambo Oguya, Pamela Achieng Odolo, Chairman Land Control Board, District Land Registrar Kisumu and The Attorney General** as the 1st to 7th Defendants respectively.

2. The application is opposed by the 1st and 2nd Defendants through the grounds of opposition dated 12th July 2013 and the 1st Defendant replying affidavit sworn on the 2nd December 2013.

3. The application is also opposed by the 3rd and 4th Defendants through the replying affidavit sworn by 4th Defendant on the 1st October 2013.

4. That on the 25th September 2014, the court gave direction for filing and exchanging written submissions. The counsel for the Plaintiffs filed their written submissions dated 2nd March 2015 while counsel for the 1st and 2nd Defendants filed theirs dated 2nd March 2015 but erroneously signed off for the Plaintiffs.

5. The following are the issues for the courts determination;

a) Whether the Plaintiff has made out a prima facie case for temporary injunction order to issue at this juncture.

b) Who pays the coasts.

6. The court has carefully considered the grounds on the notice of motion, affidavit evidence filed by the parties as detailed above, submission filed by counsel for the Plaintiffs on one part, and 1st and 2nd Defendants on the other part, and come to the following determinations;

a) That the Land parcel Kisumu/Nyahera/2529 is a subdivision from Kisumu/Nyahera/1601 and was first registered on the 23rd May 2013 and registered in the names of the 3rd and 4th Defendants on the 24th May 2013 and a title deed issued on the same date.

b) That land parcel Kisumu/Nyahera/1601, the parent title, had been first registered on 1st august 1989 and on the 2nd May 2012 it was registered in the name of Maurice Ogalo Lare and title deed issued. That the said Maurice Ogalo Lare died on the 23rd June 2012 as per the certificate of death No.32838.

c) That under the provisions of **Section 26 of the Land Registration Act No.3 of 2012**, the court is obligated to take the person named in the title deed and or register issued by the Land Registrar as the absolute and indefeasible owner of the land the document relates to unless and until that registration is successfully challenged in accordance with the law. That the person(s) named as proprietor of land parcel Kisumu/Nyahera/2529 are Caleb Odhiambo Oguya and Pamela Achieng Odolo who are the 3rd and 4th Defendants respectively. That their title is being challenged by the Plaintiffs through the suit filed herein.

d) That at this stage, the court is not expected to pronounce itself with finality on the issues of fact and law as that will have to wait the full hearing of the suit. That the court however notes that even though no party has availed a copy of the green card for Kisumu/Nyahera/1601, which would have given the history of the land and the persons who had been registered as proprietors at different times, the copy of the certificate of official search dated 27th February 2013 shows that Lilian Awuor Ogalo, the 1st Defendant, got registered with the land under entry No.6 on the 26th February 2013.

e) That further to the finding in (d) above, the 1st Defendant applied for and obtained the Land Control Board consent to subdivide land parcel Kisumu/Nyahera/1601, as evidenced by the letter of consent dated 8th May 2013. That as no confirmed grant has been availed to confirm whether the 1st Defendant had indeed complied with the provisions of the Law of **Succession, Chapter 160 of Laws of Kenya** before registering the land in her name and alienating it as she appears to have done, and further noting the Plaintiffs claim over a portion of that land, the court finds that it is only fair for the status quo obtaining to be maintained in respect of land parcel Kisumu/Nyahera/2529 pending the hearing and determination of this suit.

7. That in view of the foregoing the court finds merit in the Plaintiffs notice of motion dated 3rd July 2013 and is allowed in terms of prayer 3 with costs in the cause.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 14TH DAY OF FEBRUARY 2018

In presence of;

Plaintiffs Present

Defendants Present

Counsel M/S Olango for Mwamu for Plaintiff

Mr. Emukule for 1st and 2nd Defendants

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/2/2018

14/2/2018

S.M. Kibunja Judge

Joane court assistant

Plaintiffs present

Mr. Emukule for 1st and 2nd Defendants

M/S Olango for Mwamu for the applicants/Plaintiffs

Court; ruling dated and delivered in open court in presence of both Plaintiffs, M/S Olango for Mwamu for the Plaintiffs and Mr. Emukule for the 1st and 2nd Defendants.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/2/2018