



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.28 OF 2016

MANOJKUMAR SEDANI.....1ST PLAINTIFF

JAYANTANTILAL P. SEDANI.....2ND PLAINTIFF

VERSUS

WILLIAM ARNOLD OPIYO.....1ST DEFENDANT

COUNTY GOVERNMENT OF KISUMU.....2ND DEFENDANT

RULING

1. Through the notice of motion dated 10th February 2016, **Manojkumar Sedani and Jayantilal P. Sedani**, the Plaintiffs, seeks for temporary injunction restraining **William Arnold Opiyo**, the 1st Defendant, “whether by himself, his agents, servants or any person claiming through him from carrying on with or undertaking construction works in land reference No.Kisumu **Municipality/Block 12/214** pending the hearing and determination of this suit”. The application is based on the six grounds on the notice of motion marked (a) to (f) and is supported by the affidavits sworn by the 1st Plaintiff on the 10th February 2016 and 6th July 2016.
2. The application is opposed by the 1st Defendant through his affidavits sworn on the 12th April 2016 and 11th July 2016.
3. The 2nd Defendant also opposed the application through the replying affidavit by Solomon Kijea Mwongo, the Ag. Director Planning, sworn on the 18th April 2016.
4. The counsel for the 1st Defendant and the Plaintiffs filed their written submissions dated the 14th October 2016 and 10th January 2017 respectively.
5. The following are the issues for the determination by the court;
 - a. Whether the Plaintiffs have established a prima facie case with a probability of success for temporary injunctive order to issue at this interlocutory stage.
 - b. Who pays the costs.
6. The court has carefully considered the grounds on the notice of motion, the two affidavits each for the Plaintiffs and 1st Defendant, and one by the 2nd Defendant; submissions by counsel for the Plaintiffs and

1st Defendant; and come to the following conclusions;

a. That the suit was commenced through the plaint dated 10th February 2016 and filed with the court on the 11th February 2016 contemporaneously with the notice of motion subject matter of this ruling.

b. That among the grounds on which the Plaintiffs, who are registered proprietors **Kisumu Municipality/Block 12/208**, have based their application are as follows; that the 1st Defendant's development on **Kisumu Municipality/Block 12/214** has not been approved by 2nd Defendant; that the development has not been approved by National Environment Management Authority as no. EIA report has been done; that the development plans have not been done by qualified personal and the works being carried out are executed without appropriate supervision. The 1st Defendant has through their affidavits responded to most of the issues, especially that the 2nd Defendant has approved the development plans, copies of which have been attached bearing official stamps plus receipt for requisite fees paid. That though the first set of drawings /development plans approved in 2014 did not carry on them the details of the architect who drew them, the second one approved in February 2016 are clearly shown to have been drawn by Abuga Brian, designed and checked by Arch.J.O. Kanyangweso of Axonometric Systems, described as Architect, Urban Designers and Quantity Surveyors. That the replying affidavit by Solomon Kijea Mwongo and the letter from the County government of Kisumu dated 5th February 2016, annexed to the 1st Plaintiff's further affidavit goes further to further prove that that the 1st Defendant's development plans had been approved by the 2nd Defendant.

c. That though the 1st Defendant has deponed that the development being carried out on the suit property had received the requisite lisenze from National Environment Management Authority, there is no documentary evidence availed to confirm his assertion. The court further notes that the 1st Defendant's replying affidavit has annexed to it a "Planning Brief" for the "Application for Development Permission" done by Interspatial Consulting Partners Limited which at page 12 indicates the user of the suit property was to change to residential/commercial (office) use and at page 16, last sentence, it states as follows:

"An Environmental Impact Assessment shall be done before commencement of construction."

That from the affidavit evidence by Plaintiffs and Defendants, the construction work had already started by the time this suit was filed and yet todate no EIA report and lisenze has been availed to the court by the Defendants to rebut or controvert the Plaintiffs deposition on the matter.

d. That though the 1st Defendant disputed the contents of the letter dated 5th February 2016 which is attached to the 1st Plaintiff's further affidavit of 6th July 2016, the court has taken note of its paragraph one which refers **"to your letter Ref.No. ORC/DO/DEM/2016 of January 22, 2016"** which tarries with the date and reference of the letter addressed to the 2nd Defendant, attached to the Plaintiffs supporting affidavit. That the letter of 5th February 2016 is clearly a response to the letter dated 22nd January 2016 and the reference to the parcel 124, instead of 214 has been explained by the Plaintiffs in their further affidavit as an error.

7. That flowing from the foregoing, the Plaintiffs have established that the 1st Defendant commenced the development project on his land **Kisumu Municipality/Block 12/214** without undertaking environmental impact assessment and or pay for and obtaining the requisite lisenze. That accordingly, the Plaintiff application dated 10th February 2016 has merit and is allowed in terms of prayers 3 with costs in the cause.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 7TH DAY OF FEBRUARY 2018

In presence of;

Plaintiffs Absent

Defendants Absent

Counsel Mr. Osodo for Otieno for plaintiff

M/S Ongila for Kouko for 1st Defendant and

Mr. Omondi T. for Wasuna for 2nd Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/2/2018

7/2/2018

Before S.M. Kibunja Judge

Oyugi/Joan court assistant

Parties absent

M/S Ongila for Kouko for 1st Defendant

Mr. Osodo for Otieno for plaintiff

Mr. Omondi T. for Wasuna for 2nd Defendant

Court: The ruling dated and delivered in open court in presence of M/S Ongila for Kouko for 1st Defendant, Mr. Osodo for Otieno for Plaintiff and Mr. Omondi T. for Wasuna for 2nd Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/2/2018