



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KISUMU**

**ELC CASE NO 142 OF 2017**

**MARTIN OLOO OBONYO.....PLAINTIFF**

**VERSUS**

**WALTER OMBENG OKELLO .....1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR SIAYA.....2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

**1. Martin Oloo Obonyo**, the Plaintiff, vide notice of motion dated 16<sup>th</sup> February 2017 seeks for temporary injunction order restraining **Walter Ombeng Okello**, The Land Registrar Siaya, and Attorney General, the defendants, “either by themselves, their servants and or agents or anyone whomsoever claiming title or acting on their behalf from remaining in, occupying, continuing to occupy or doing any act on land parcel known as L.R. Nos. **Nyangoma/Uyawi/3496, 3497, 3713** all formerly known as Nyangoma/Uyawi/2405 pending the full hearing and determination of this suit.” The application is based on grounds (a) to (e) on the notice of motion and is supported by the affidavit of the Plaintiff sworn on the 16<sup>th</sup> February 2017.

**2. The** application is opposed by the 1<sup>st</sup> Defendant through his replying affidavit sworn on 6<sup>th</sup> July 2017.

3. Mr. Mwamu and Nyanga, learned counsel for the Plaintiff and 1<sup>st</sup> Defendant respectively, made their oral submissions in support of their client’s case on the 17<sup>th</sup> October 2017 when the application came up for hearing.

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

a. Whether the Plaintiff has made out a prima facie case with a probability of success for the order sought to issue.

b. Who pays the costs.

5. The court has after considering the grounds on the notice of motion, affidavit evidence adduced by the Plaintiff and Defendant, plus the oral submissions by both counsel come to the following determinations;

a. That the suit lands subject matter of this suit have been litigated on in several foras since the adjudication process commenced in the section they are situated. That the litigations had gone up to the Minister's level but the decision or award thereof was quashed by the High Court through judicial review proceedings.

b. That this court recalls delivering another ruling on 31<sup>st</sup> January 2018 in Kisumu ELC No.141 of 2017 in which the plaintiff herein was also the Plaintiff in that other case. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant in this case are also appearing in the same capacity and position in that other case. That the only difference in parties between that other case and the current one is the 1<sup>st</sup> Defendant, as in this case we have Walter **Ombeny Okello** while in the other case is **Samuel Oguta Sewe**.

c. That the counsel appearing for the Plaintiff in this case is the same counsel for the Plaintiff in that other case. The counsel for the persons appearing as 1<sup>st</sup> Defendant in this case is also the counsel on record for the 1<sup>st</sup> Defendant in the other case.

d. That though the prayers in the current suit are more and slightly different from those in ELC 141 of 2017, and the subject matters are different, the two suits have more or less similar issues. The parties should consider consolidating them for hearing and determination so as to save and optimize on the court's time.

e. That as found in the ruling of 31<sup>st</sup> January 2018 in ELC 141 of 2017, the suit lands in this case are still subject to the ongoing adjudication exercise as they are yet to get registered in accordance with **Section 28 and 29 of the Land Adjudication Act chapter 284 of Laws of Kenya**. That accordingly the Plaintiff was required to obtain a written consent from the concerned Adjudication Officer before filing this suit in court but he did not.

6. That in view of the findings above, the court finds the Plaintiff's notice of motion dated 16<sup>th</sup> February 2017 to be without merit and is dismissed with costs.

**Orders accordingly.**

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 7<sup>TH</sup> DAY OF FEBRUARY 2018**

In presence of;

Plaintiff                      Absent

Defendants                     Absent

Counsel                        Mr. Omondi T. for Plaintiff

Mr. Osodo for Nyanga for 1<sup>st</sup> Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**7/2/2018**

7<sup>th</sup> February 2018

S.M. Kibunja Judge

Oyugi/Joane court assist

Mr. Omondi T. for Plaintiff/Applicant the parties are absent

Mr. Omondi for Nyanga for the 1<sup>st</sup> Defendant present.

The Attorney General for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants absent.

Court: the ruling dated and delivered in open court in presence of Mr. Omondi T. for the Plaintiff and Mr. Osodo for 1<sup>st</sup> Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/2/2018