



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

**ELC CASE NO.313 OF 2016**

**PETERLIS NYAGUDI OBEGO ..... PLAINTIFF**

**VERSUS**

**JANE ATIENO OKOTH ..... DEFENDANT**

**RULING**

1. **Peterlis Nyagudi Obego**, the Plaintiff, seeks vide the notice of motion dated 28<sup>th</sup> November 2016, for temporary order of injunction restraining Jane Atieno Okoth, the Defendant, “by herself or her servants, or proxies or any of them from entering, remaining on, developing, occupying, cultivating any crops on or using any portion of land parcel No. **Kisumu/Reru/3777**, measuring or estimated to measure 0.19 Ha or doing anything else which may restrict, curtail, diminish or interfere with the Plaintiff’s quiet possession, use and enjoyment of the said land parcel No. **Kisumu/Reru/3777**, measuring or estimated to measure 0.19 ha, pending the hearing and final determination of this suit.” The application is based on the four (4) grounds on its face and surrounded by the affidavit sworn by the Plaintiff on the 28<sup>th</sup> November 2016.

2. The application is opposed by the Defendant through her replying affidavit sworn on the 19<sup>th</sup> June 2017.

3. That on the 20<sup>th</sup> June 2017, the court gave directions on filing and exchanging written submissions in 30 days. The counsel for the Plaintiff filed their written submissions dated 28<sup>th</sup> June 2017. The matter was then mentioned on 5<sup>th</sup> December 2017, and the submissions filed by counsel for the Defendant on 4<sup>th</sup> December 2017 dated 30<sup>th</sup> November 2017, were expunged from the record of the court on application of the Plaintiff’s counsel for being filed outside the time set on 20<sup>th</sup> June 2017.

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

- a) Whether the Plaintiff has established a prima facie case with a probability of success for temporary injunction to issue at this stage.
- b) Who pays the costs.

5. The court has carefully considered the grounds on the notice of motion, affidavit evidence, submissions by counsel for the Plaintiff and concluded as follows;

- a) That the Plaintiff is the registered proprietor of the suit property, **Kisumu/Reru/3777**, since 14<sup>th</sup> May 2014 as confirmed by the copy of the title deed attached to her supporting affidavit. That accordingly and under the provision of **Section 26 of Land Registration Act No.6 of 2012**, this

court is obligated to take him as the indefeasible and absolute owner of the said land until and unless his title is successfully challenged.

b) That the Plaintiff reportedly bought the land from Benjamin Ovesi Onyango, who is the same person the Defendant claim sold a portion of land **Kisumu/Reru/1556** to her late husband, Naftali Okoth Oidho, on the 25<sup>th</sup> February 1999. That even though the Defendant claims that the portion of land bought by her late husband “constitutes **Kisumu/Reru/3777**”, and that she had commenced suit through originating summons, being Kisumu ELC 8 of 2017 to be declared and registered as the proprietor, there is no confirmation as to whether that suit has been heard and or decided in her favour.

c) That it is only fair and just that any development activities of a permanent nature or likely to alter the value of the suit land that may have been commenced from 2014 by the Defendant be stopped pending the hearing and determination of this suit.

6. That flowing from the foregoing, the court finds merit in the Plaintiff’s notice of motion dated 28<sup>th</sup> November 2016 and is allowed in the following terms;

a) That an order of temporary injunction is hereby issued restraining the Defendant by herself, her servants, agents and proxies from developing or cultivating any portion of land parcel **Kisumu/Reru/3777** pending the hearing and determination of this suit.

b) The costs be in the course

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 14<sup>TH</sup> DAY OF MARCH 2018

In presence of;

Plaintiff            Absent

Defendant         Absent

Counsel            Mr. Orengo for the Plaintiff

                          Mr. Ochieng for the Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**14/3/2018**

**14/3/2018**

**S.M. Kibunja Judge**

**Joane Court Assistant**

**Defendant present**

**Mr. Orengo for the Plaintiff/applicant**

**Mr. Ochieng for the Defendant/Respondent**

**Court: the ruling dated and delivered in open court in the presence of the Defendant and her counsel Mr. Ochieng Plus Mr.**

**Orengo for the Plaintiff.**

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**14/3/2018**