



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.248 OF 2017

BENSON AMBOKO OKUKU.....PLAINTIFF

VERSUS

MORISE ODUKHO AMBOKODEFENDANT

RULING

1. **Benson Amboko Okuku**, the Plaintiff, seeks vide the notice of motion filed on 27th July 2017 for temporary injunction order restraining **Morise Odukho Amboko**, the Defendant, from using and developing land parcel **North Gem/Marenyo/349**. The notice of motion was filed contemporaneously with the plaint dated 21st July 2017 whose main prayer is “permanent injunction restraining the defendant, his servant or persons acting from his authority from trespassing, wasting an (sic) eviction order do issue in respect of parcel No. **North Gem/Marenyo/349**.”

2. The plaintiff has pleaded that he is the registered proprietor of the said land and has annexed to his affidavit a copy of the certificate of official search showing that he got so registered under entry no.10 of the 22nd June 2017. He has also attached to his list of documents another copy of certificate of official search of North Gem/Marenyo/296, registered in the name of Amboko S/O Nyamusi under entry No.1 of 28th November 1967.

3. The application is opposed by the Defendant through his replying affidavit sworn on the 12th September 2017. The Defendant annexed a copy of the ruling in Kisumu H.C. Succession Cause No.662 of 2001 where the Defendant’s objection proceedings against the grant issued to **Noah Okuku Etsimule**, father to the Plaintiff, was upheld on the 6th July 2004. The ruling indicates that land parcel **North Gem/Marenyo/349** is a subdivision from parcel **North Gem/Marenyo/296**, and that it was part of the estate of the late **Michal Angana alias Mikah**. The Defendant further depones that the Plaintiff is not the legal administrator of the estate of his late father, **Noah Okuku**, and hence has no capacity to institute this suit and that he had obtained registration with the land irregularly and in contravention with the court ruling of 6th July 2004. The court has taken note that the Defendant’s filed statement of defence dated 12th September 2017 contains three prayers after paragraph 15 which can only be taken to be a counterclaim to the Plaintiff’s claim. The prayers includes dismissing the Plaintiff’s case, restoring the ownership of the suit land to the name of **Mikal Angana Estimile alias Mikal Ariri** as per the objection proceedings ruling of 6th July 2004, and revoking the names of the Plaintiff and his late father from the register of the suit land.

4. The application came up for hearing on the 7th December 2017 when Mr. Lugadiro for the Plaintiff and the Defendant in person made their oral submissions.

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

- a) Whether the Plaintiff has made a reasonable case with a probability of succeeding for the injunction order sought to issue at this stage.
- b) Who pays the costs of the application.

6. The court has carefully considered the pleadings, the affidavit evidence and oral submissions tendered and come to the following conclusions;

- a) That land parcel **North Gem/Marenyo/349** was first registered on the 28th November 1967 in the name of Mikal Ariri w/o Etsimile as per the copy of the green card dated 5th December 2017 produced by the Defendant. That under entry No.2 of 6th January 1999, the land was registered in the name of Noah Okuku Estimule, father to Plaintiff, through succession. That Defendant filed a caution under entry No.4 on the 10th March 2000 which was withdrawn under entry No.5 of 2nd August 2000. That the land was registered in the name of Mikal Ariri w/o Estimule again on the 18th October 2000. That entry No.7 refers to a court order in Kisumu H.C. Succession Cause No.662 of 2001 directing the Land Registrar to transfer the land to Noah Okuku, which order was

given effect in entry No.8 of 30th March 2017.

That the Plaintiff then became the registered proprietor under entry No.10 of 22nd June 2017 through succession.

b) That the transactions captured in (a) above clearly shows that the dispute over the land has been running over many years between the Plaintiff, and before him his late father on one part, and the Defendant on the other part.

c) That accordingly, as both the Plaintiff and Defendant have lodged competing proprietary interest claims over the suit land, and as it is impossible at this stage, and with the evidence so far availed to know which party is actually in possession of the land, it is prudent for both parties to maintain the existing status quo in respect of the suit land's occupation and legal position pending the hearing and determination of their claims.

7. That flowing from the foregoing, the court finds no merits in the Plaintiffs notice of motion dated the 21st July 2017 and filed on the 27th July 2017. That the application is dismissed with costs in the cause.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 11TH DAY OF APRIL 2018

In presence of;

Plaintiff Present

Defendant Present

Counsel None

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

11/04/2018

11/4/2018

S.M. Kibunja Judge

George Court assistant

Plaintiff present

Defendant present

Court:

The ruling dated and delivered in open court in presence of both parties.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

11/04/2018