



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC. CASE NO. 91 OF 2012

PIUS SHEM OWINO.....PLAINTIFF/APPLICANT

VERSUS

PHILLIS OMBUYA JOTHAM.....DEFENDANT/RESPONDENT

RULING

1. Pius Shem Owino, the Plaintiff, commenced this suit through the plaint dated 6th November 2012. He has also filed the following applications;

- a. Notice of Motion dated 6th November 2012 for injunction orders.**
- b. Notice of Motion dated 17th March 2014 for leave to amend the plaint.**
- c.. Notice of Motion dated 17th March 2014 for injunction orders.**
- d. Notice of motion dated 27th November 2014 for contempt.**

The Plaintiff appeared in Court on the 7th November 2012 and was directed to amend the application in (a) above and return to Court the following day, the 8th November 2012 but there is no indication of what happened on that day. Then on the 21st March 2013 the application in (b) above was dealt with when the Court granted the leave to file and serve amended plaint in 14 days. There is however no amended plaint filed to date. Then on the 18th March 2014, the notice of motion dated 6th November 2012 in (a) above was marked withdrawn on application of the Counsel for the Plaintiff. The Court then certified the notice of motion in (c) above urgent and granted temporary injunction in terms of prayer 2 pending hearing and determination of the application. Then on the 12th May 2014, directions on filing of written submissions on the application were given. The Learned Counsel for the Plaintiff filed their written submissions dated 10th June 2015 and another copy of the same dated 10th October 2017.

2. The Defendant filed grounds of opposition dated the 29th April 2014 but no written submissions.

3. The Court has carefully considered the grounds on the notice of motion, grounds of opposition, affidavit evidence and come to the following findings;

- a. That from the Plaintiff's affidavit evidence, the Defendant had, by the time the notice of motion was filed, "constructed on the suit parcels permanent house claiming that the suit parcels belong to her and indeed her son had commenced a development structure on the parcel."
- b. That though the copy of the title deed for Parcel Kisumu/Marera/3239 and 3241, and the copies of the certificates of official searches for the same, confirm that they are registered in the name of the Plaintiff, and in view of the time that has lapsed since the date of filing of the application, it is only fair and just that the obtaining status quo be maintained pending the hearing and determination of the suit. That to grant the injunctive order sought in prayer (3) which includes restraining the Defendant from "trespassing thereon" among others, would have the effect of evicting her from the suit land where her permanent house is situated, before the main suit is heard and determined on merit.

4. That in view of the foregoing, the Court finds no merit in the Plaintiff's notice of motion dated 17th March 2014, and the same is dismissed with costs in the cause. That the Court on its own motion orders the parties to maintain the obtaining status quo to facilitate the hearing of the

main suit.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 30TH DAY OF MAY 2018

In the presence of:

Plaintiff Absent

Defendant Absent

Counsel Absent

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE