



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. CASE NO. 196 OF 2015

GEORGE ORARO.....1ST PLAINTIFF

CHRISTINE ORARO.....2ND PLAINTIFF

VERSUS

JUMA OYIENDA JABEL.....DEFENDANT

RULING

1. The Plaintiffs filed the notice of motion dated 28th October 2015 seeking for mandatory and prohibitory injunctions against the Defendant in terms of prayers 2 and 3. The application is based on the six (6) grounds on its face and is supported by the affidavit sworn by Christine Oraro on the 28th October 2015.

2. The Defendant opposes the application through his replying affidavit sworn on 20th April, 2016.

3. The Court gave directions on filing and exchanging written submissions on the 17th May 2016. The Counsel for the Plaintiffs filed their written submissions dated the 4th July 2016 on the 6th July 2016. The Counsel for the Defendant did not file any.

4. The issues for determinations are as follows:

a) Whether the Plaintiffs have established a prima facie case with a probability of success for the Mandatory and Prohibitory injunctions sought to be issued at this stage.

b) Who pays the costs of the application.

5. The Court has carefully considered the grounds on the notice of motion, the affidavit evidence, the written submissions filed by the plaintiffs' Counsel and come to the following conclusions;

a) That though the Plaintiffs' evidence at paragraph 2 of the supporting affidavit is that the Chief of Dago Location was the source of the information that the damage had been done by the defendant that has been denied through paragraph 13 of the Defendant's replying affidavit. That claim can only be verified after hearing the witnesses on both sides and not at this stage.

b) That in view of the finding in (a) above, the Court finds that no special circumstance has been established by the Plaintiffs to enable the Court consider the issuance of Mandatory Injunction at this stage. The Defendant has alleged that he is the one who has been in possession of the suit land, and that the title held by the Plaintiffs was not regularly obtained. That with that in mind, it is only fair and just that the suit goes to hearing as soon as possible to enable the issues raised be determined on merit.

c) That accordingly, the Court finds that Plaintiffs have not established a prima facie case upon which the injunction orders sought can be considered.

6. That following from the foregoing, the Court finds no merit in the Plaintiffs' Notice of Motion dated 28th October 2015 and is dismissed with costs.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 9TH DAY OF MAY 2018

In the presence of:

Plaintiffs Absent

Defendant Absent

Counsel Mr. Mwasigwa for the Plaintiffs

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE