



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. CASE NO. 170 OF 2017

VINCENT OCHUNG ABONDO AND 14 OTHERS.....PLAINTIFFS/APPLICANTS

VERSUS

LUCAS AWADHA OKADO.....1ST RESPONDENT/APPLICANT

OLIVER OTIENO ARIKA.....2ND DEFENDANT/RESPONDENT

RULING

1. The plaintiffs through the Notice of Motion dated 16th May 2017 seeks for temporary injunction “restraining the Defendants by themselves, their agent, servants and/or employees from further sub-division, sale, transfer, charges, leases, destruction, wastage, development and/or any other dealings on parcels No. North Sakwa/Nyawita/6102, 6421, 6422 and 6423 irregularly registered in the name of the Defendants pending the hearing and determination of this suit”. The application is based on the eleven (11) grounds on its face and supported by the affidavit sworn by Vincent Ochung Abondo on behalf of the other plaintiffs on the 16th May 2017.

2. The application is opposed by the 1st and 2nd Defendants through their replying affidavits sworn on the 18th September, 2017 and 10th October 2017 respectively.

3. That following the directions given on the 11th October 2017, the Counsel for the plaintiffs and Defendants filed their written submissions dated 1st December 2017 and 6th December 2017 respectively.

4. The following are the issues for the court's determinations;

a) **Whether the plaintiffs have established a prima facie case with a possibility of success for temporary injunction order to issue at this stage.**

b) **Who pays the costs**

5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence and written submissions by both Counsel and come to the following findings:

a) That from the documentary evidence availed in form of copies of green card, the Land parcel North Sakwa/Nyawita/82 was first registered on the 6th January 1973 in the name of Othoro Alal who died on the 31st December 1980 as shown by the certificate of death attached to the 1st Defendant's affidavit. That the land was then transferred to Samwel Odongo Ambasa through transmission on the 29th December 1986. That the said Samwel subdivided the land into parcels 1062 and 1063 and the title was closed on the 6th April 1987. That however the subdivision and transfer in entries numbers 3, 4, 5 and 6 of the green card were subsequently reversed vide an order issued in Kisumu H.C. Succession Cause No. 18 of 1986. The plaintiffs and the 1st Defendant have availed a copy of the order dated 3rd July 2014 in Kisumu H.C. Succession No. 18 of 1986 which contains the following two orders;

“1. That the matter is certified as urgent.

2. That the Land Registrar reverse the subdivision of Parcels Nos. North Sakwa/Nyawita/1062 and North Sakwa/Nyawita/1063 to revert to LUKAS OKADO AWADHA unconditionally.”

The Court takes the said LUKAS OKADO AWADHA to be the 1st Defendant in this suit.

b) That the copy of the green card for parcel North Sakwa/Nyawita/82 further shows that Lukas Okado Awadha, the 1st Defendant, was on the 15th October 2015 registered as the proprietor of the suit land through Kisumu H.C. Succession Cause No. 35 of 1994. That the title was closed on the 28th January 2016 upon being subdivided into parcels 6101 and 6102. The 1st Defendant has attached copies of the grant and certificate of confirmation dated 2nd December, 1996 and 4th June 1998 in Kisumu H.C. Succession Cause No. 35 of 1994 in respect of the estate of Othoro Alal. He has also annexed grant dated 6th June 2012 and Certificate of Confirmation dated 28th May 2013 issued in Kisumu H.C. Succession Cause No. 18 of 1986.

c) That the copies of the title deed and green cards availed to the court in respect of Land Parcels North Sakwa/Nyawita/6101 and 6102 show that the lands are registered in the names of Lucas Okado Awadha and Oliver Otieno who are the 1st and 2nd Defendants respectively. That the green card for North Sakwa/Nyawita/6101 confirm that the title was closed on the 30th March 2017 upon being subdivided into parcels 6421 to 6423 which parcels are in the name of the 1st Defendant as shown by the certificate of official searches availed.

d) That the copies of the green cards and title deeds availed by the plaintiff relating to North Sakwa/Nyawita/1062 shows the title was closed on the 14th October 2010 upon being subdivided to parcels 3317 to 3328. That the copies of the title deeds for parcels North Sakwa/Nyawita/3514 to 3517 shows that they were first registered in 2014 and are subdivision from North Sakwa/Nyawita/1063. That it is doubtful, in view of the order of 3rd July 2014 in Kisumu H. C. Succession Cause No. 18 of 1986 and the confirmation of the grant in Kisumu H. C Succession Cause No. 35 of 1994 referred to in (a) and (b) above, whether parcels North Sakwa/Nyawita/1062 and 1063 and the subdivisions thereof legally exists. That the parcels of land claimed by the plaintiffs falls in that group and as the Defendants are the ones recently registered as proprietors of North Sakwa/Nyawita/82 and the subdivisions thereof, the courts takes them as the absolute and indefeasible owners of their respective parcels whose title documents they have availed in terms of Section 26 of the Land Registrations Act No. 3 of 2012, until such a time that their registration is successfully impugned.

6. That following from the foregoing the court finds no merit in the notice of motion dated 16th May 2017 and the same 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

Defendants Absent

Counsel Mr. Olang for Onyatta for Plaintiffs

Mr. Njoga for Ken Omollo for Defendants

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE