



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC. CASE NO. 143 OF 2013 (CONSOLIDATED WITH ELC NO. 170 OF 2013)**

**NYANDO ENTERPRISES LIMITED.....PLAINTIFF/RESPONDENT**

**AND**

**EN WORLD LIMITED.....DEFENDANT/RESPONDENT**

**VISION TECHNO TRADE CO. LTD.....1<sup>ST</sup> INTERESTED PARTY/APPLICANT**

**RAYTHATHA HITESHKUMAR MAHENDRABHAI T/A**

**OKHA STEEL & HARDWARE.....2<sup>ND</sup> INTERESTED PARTY/APPLICANT**

**KISUMU DISTRICT LAND REGISTRAR.....3<sup>RD</sup> INTERESTED PARTY/RESPONDENT**

**RULING**

1. Vision Techno Trade Co. Ltd and Raythatha Hiteshkumar Mahendrabhai T/A Okha Steel & Hardware, the Applicants, filed the notice of motion dated 12<sup>th</sup> March 2018 seeking for the following orders among others;

a) **That they be joined to the suit as 1<sup>st</sup> and 2<sup>nd</sup> interested parties.**

b) **That temporary injunction restraining Nyando Enterprises Limited and E N World (E.A) Limited, the Plaintiff and 1<sup>st</sup> Defendant's respectively, from interfering with the Applicants' right to enjoyment of quiet possession of Kisumu Municipality/Block 3/43 pending the hearing and determination of this suit.**

The application is based on the six grounds on its face marked (i) to (vi) and supported by the affidavits sworn by Dadhaniya Umeshchadra Maganlal, the Managing Director of the 1<sup>st</sup> Applicant, on the 12<sup>th</sup> March 2018 and 28<sup>th</sup> March 2018.

2. The application is opposed by the 1<sup>st</sup> Defendant through the affidavit sworn by Neeral Prafulkumar Pachmatia, a director with 1<sup>st</sup> Defendant, on the 12<sup>th</sup> April 2018.

3. The application came up for hearing on the 3<sup>rd</sup> May 2018 with Mr. Nyamweya and M/s Pandit, the learned counsel for the Applicants and 1<sup>st</sup> Defendant respectively, making their oral submissions for and against the application. Mr. Yogo and M/s Langat for the Plaintiff and District Land Registrar Kisumu and the Attorney General, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively, informed the court from the bar that they were not opposing the application.

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

a) **Whether the Applicants are necessary parties to be enjoined into the proceedings for the determination of the issues arising in the suit to be determined.**

b) **Whether the Applicants have made a prima facie case with a probability of success for temporary injunction orders to issue at this stage.**

c) **Who pays the costs of the application.**

5. The Court has carefully considered the grounds on the notice of motion, the affidavit evidence, the oral submissions, the record and come

to the following conclusions;

a) That this suit being Kisumu ELC No. 170 of 2013 was commenced by Nyando Produce Limited, the Plaintiff, against E.N. World (E.A) Limited, District Land Registrar, Kisumu and Attorney General, the 1<sup>st</sup> to 3<sup>rd</sup> Defendants respectively, through the plaint dated the 26<sup>th</sup> June 2013, and filed on the 28<sup>th</sup> June 2103. The dispute is over Land Parcel Kisumu Municipality/Block 3/42.

b) That Nyando Enterprises Limited, the Plaintiff, also commenced Kisumu ELC 143 of 2013 against EN World (E.A) Limited, the Defendant, through the plaint dated 6<sup>th</sup> June 2013 and filed on the 7<sup>th</sup> June 2013. That the subject matter of the suit is Kisumu municipality/Block 3/43.

c) That two suits came up for hearing on the 14<sup>th</sup> November 2017 when the counsel for the parties entered into a consent to consolidated them for hearing and determination. That the counsel agreed that the hearing do take place in Kisumu ELC 170 of 2013 which had all the four parties.

d) That it was for reasons that the Kisumu County Land Registrar was already a party in this proceeding that prayer 3 of the notice of motion that was seeking that the office be enjoined as the 3<sup>rd</sup> interested party was abandoned.

e) That the Applicants claim to Kisumu Municipality/Block 3/43 is pursuant to an undated sale agreement between themselves as purchasers, and the Plaintiff as the vendor, marked "DUM-1" following which they were issued with a certificate of lease marked "DUM-9" and both attached to the supporting affidavit. That the copy of the lease shows that the Applicants became the registered proprietors on the 1<sup>st</sup> November 2017 and that certificate of lease was issued on the 7<sup>th</sup> November 2017.

f) That from the findings in (a) (b) and (e) above, the transactions between the Plaintiff and the Applicants over Kisumu Municipality/Block 3/43 took place when this suit was pending before this court. That indeed when Maxwell Otieno Odongo, the Managing director of the Plaintiff, testified before this court on the 14<sup>th</sup> November 2017, he did not disclose that the ownership of the said land had changed. That in his evidence in chief, he said the following on the ownership of the said land;

***"The Plaintiff owns Kisumu municipality/Block 3/42 and 43. The titles are still in the names of the Plaintiff."***

That as the said testimony was under oath and has not been recanted, the court finds that the Applicants' interest over the suit land, having been acquired while this suit was pending before the court, is not relevant in determining the issues in dispute as between the Plaintiff and the 1<sup>st</sup> Defendant.

g) That the record shows that the Plaintiff's notice of motion dated 6<sup>th</sup> June 2013 filed in Kisumu ELC No. 143 of 2013 seeking for temporary injunction order in relation to Kisumu Municipality/block 3/43 was on the 22<sup>nd</sup> July 2013 settled by consent in the following terms;

***"The application dated 6<sup>th</sup> June 2013 and filed on the 7<sup>th</sup> June 2013, is hereby disposed of by an order to maintain the status quo. The order applies to both sides."***

Though the court has not been addressed on the effect of that consent order to the transaction between the Plaintiff and the Applicants, the question as to whether such a transaction did not contravene the order would definitely arise in the main suit. That whatever claims the Applicants may have over the suit property would not involve the 1st Defendant as they are not privy to the sale agreement under which their claim is based.

6. That flowing from the foregoing, the court finds no merit on the Applicants' notice of motion dated 12<sup>th</sup> March 2018. That the said application is therefore dismissed with costs to the 1<sup>st</sup> Defendant.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**

DATED AND DELIVERED THIS 11<sup>TH</sup> DAY OF October 2018

**In the presence of:**

Plaintiffs/Respondents Absent

Defendants/Respondents Absent

Interested Parties/Applicants Absent

Counsel Mr. Ojuro for the Plaintiff.

Mr. Nyanga for Mr. Nyamweya for 1<sup>st</sup> and 2<sup>nd</sup> Interested

Parties

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**