



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC. CASE NO. 346 OF 2016

RICHARD OTIENO OORO.....1ST PLAINTIFF

JOHN AWALLA KOORO.....2ND PLAINTIFF

VERSUS

WASHINGTON ODHIAMBO.....DEFENDANT

RULING

1. Richard Otieno Ooro and John Awalla Kooro, the Plaintiffs, vide notice of motion dated 27th October 2016 seeks for order of injunction restraining Washington Odhiambo Ogolla, the Defendant, either by himself or agents **“from entering, remaining in, occupying/continuing to occupy, cultivating on, alienating, selling or doing any act on land parcel known as P.NO. Bondo/Nyangoma/4601 Nyangoma Adjudication Section pending the full hearing and determination of the suit.”** The Plaintiffs also pray for costs. The application is based on the eight (8) grounds marked (a) to (h) on its face. The motion is supported by the affidavits sworn by the 1st Applicant on the 25th October 2016 and 23rd March 2017.

2. The application is opposed by the Defendant through his replying affidavit sworn on the 22nd September 2017.

3. That when the motion came up for hearing on the 2nd October 2017, Counsel for the parties entered a consent that a temporary injunction be issued restraining the Defendant by themselves or anyone acting on their behalf from cultivating, constructing or selling land parcel Bondo/Nyangoma/4601 pending the hearing and determination of this application. That the Counsel further agreed to file and exchange written submissions. That consequently, the learned Counsel for the Plaintiffs filed their submissions dated 5th March 2018.

4. The following are the issues for the determination by the Court;

a) Whether the Plaintiffs have established a prima facie case with the probability of success for the temporary order of injunction to issue at the interlocutory stage.

b) Who pays the costs.

5. The Court has carefully considered the grounds on the application, the affidavit evidence by both sides, written submission by the Counsel for the Plaintiffs and come to the following findings;

a) That though the Defendant has denied that his land parcel Bondo/Nyangoma/3534 has a common boundary with the Plaintiffs land, Bondo/Nyangoma/4601, the court has taken note of his deposition at paragraphs 11 to 14 of the replying affidavit that among others appear to accuse the Plaintiffs of fraudulently acquiring part of his land.

b) The Plaintiffs claim of encroachment onto their land by the owner of parcel 3534 had been lodged with the Sub-county Land Adjudication/Settlement Officer, Bondo, who confirmed it on visiting the locus as shown in the annexure **“ROO-2a”** dated 26th May 2016. That on that confirmation alone, the court is satisfied that the Plaintiffs have established a prima facie case with a probability of success and are therefore deserving of temporary injunction order to be in force pending the hearing and determination of the suit.

6. That in view of the finding above, the Court finds merit in the Plaintiffs application and orders as follows;

a) That the notice of motion dated 26th October 2016 is allowed in terms of the consent order of 2nd October 2017, which is hereby confirmed, to be in force pending the hearing and determination of this suit.

b) That costs of the application be in the cause.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 21ST DAY OF NOVEMBER 2018

In the presence of:

Plaintiffs Absent

Defendants Absent

Counsel M/s Ayieta for Mwamu for Plaintiffs

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE