



**REPUBLIC OF KENYA**

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

**ELC SUIT NO. 591 OF 2015**

**MARTIN AWITI ODERO & MACRINE ADHIAMBO OWITI.....PLAINTIFFS**

**VERSUS**

**M.V. SUGAR PLANTATION LIMITED.....1<sup>ST</sup> DEFENDANT**

**ARTHUR ODUOR OYUGI.....2<sup>ND</sup> DEFENDANT**

**JOB OKUNA OYUGI.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. Macrine Adhiambo Owiti, the Plaintiff, filed the notice of motion dated 28<sup>th</sup> February 2018 seeking to have M. V. Sugar Plantations Limited, Arthur Oduor Oyugi and Job Okuna Oyugi, the Defendants, and their agent Mr. Douglas Oyugi restrained ***“from taking possession and occupation of the Parcel of Land Reference Number 8455/8, and or evicting her servants and or agents and or in any manner interfere with the Plaintiff’s use and possession of the property”***, pending the hearing and determination of this suit. The application is based on the six (6) grounds on its face and is supported by the affidavit of the Plaintiff, sworn on the 28<sup>th</sup> February 2018. The Plaintiff’s case is that her late husband and herself had on the 11<sup>th</sup> May 2006 entered into a sale agreement with the 1<sup>st</sup> Defendant under which they were given possession and use of L.R. No. 8455/8, the suit land. That upon the Defendants failing to hand over to them the completion documents, they filed this suit. That they also filed a notice of motion dated 5<sup>th</sup> July 2012 for injunction orders which they did not prosecute when the Defendants agreed to maintain the status quo. That however, one Douglas Oyugi barred her guards and servants from entering the suit land on the 22<sup>nd</sup> February 2018, prompting the current application.

2. The application was served upon M/s Ogejo Olendo & Company Advocates, on record for the Defendants, on the 7<sup>th</sup> March 2018 as confirmed in the affidavit of service sworn by Ayieta Joy Atieno Advocate, on the 7<sup>th</sup> May 2108. The application came up for hearing on the 7<sup>th</sup> May 2018 with both parties counsel represented. The hearing was adjourned to the 26<sup>th</sup> September 2018, but the Defendants’ counsel did not attend or file any replying papers. The counsel for the Plaintiff applied for the prayers sought in their application.

3. The following are the issues for the court’s determination;

- a) **Whether the Plaintiff has established a prima facie case with a probability of success for temporary injunction order to issue.**
- b) **Whether injunction order could issue against Mr. Douglas Oyugi who is not a party in this proceedings.**
- c) **Who pays the costs of the application.**

4. The Court has after carefully considering the grounds on the notice of motion, the supporting affidavit and the record come to the following findings;

- a) That this suit was commenced through the plaint dated the 25<sup>th</sup> May 2012, and filed on the 30<sup>th</sup> May 2012, seeking for permanent injunction against the Defendants by themselves, or those claiming under them, in respect of the portion of land measuring about fifty (50) acres carved out of the suit land; specific performance of the agreement dated 11<sup>th</sup> May 2006 and costs among others.
- b) That through the memorandum dated the 25<sup>th</sup> July 2012, M/s Ogejo, Olendo & Company Advocates entered appearance for the Defendants.
- c) That the Plaintiffs then sought for injunction order through the notice of motion dated 5<sup>th</sup> July 2012. The Defendants filed their

replying affidavit sworn by the 2<sup>nd</sup> Defendant, a director of the 1<sup>st</sup> Defendant and with the authority of 3<sup>rd</sup> Defendant, on the 23<sup>rd</sup> November 2012. That the record shows that on the 25<sup>th</sup> July 2013, the application came up for hearing and the counsel for the parties entered a consent that ***“application be dispensed with. Main suit to be fixed for hearing. Parties to comply with all pre-trial procedures.”***

d) That the Plaintiff’s position that the failure to prosecute the notice of motion dated 5<sup>th</sup> July 2012 was on the understanding that the status quo would be maintained has not been challenged or rebutted.

e) That further, the Defendants have not challenged the Plaintiff’s deposition that on the 22<sup>nd</sup> February 2018 they barred her workers from accessing the suit land through their agent, one Douglas Oyugi. That the Plaintiff is therefore entitled to the order sought, but for the order to be specifically directed at the said Douglas Oyugi, the Plaintiff may need to have him enjoined as a Defendant first.

5. That flowing from the foregoing, the court finds merit in the Plaintiff’s notice of motion dated 28<sup>th</sup> February, 2018 which is hereby allowed in the following terms;

a) **That pending the hearing and determination of this suit, the Defendants by themselves, their agents and or servants are hereby restrained from taking possession and occupation of the fifty (50) acres of land parcel L.R. No. 8455/8, subject matter of the sale agreement of 11<sup>th</sup> May 2006, and or evicting the Plaintiff, her servants and or agents or in any other manner interfere with the Plaintiff’s use and possession of the said property.**

b) **That the Defendants will pay the Plaintiff costs of the application.**

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**

DATED AND DELIVERED THIS...5<sup>TH</sup>...DAY OF DECEMBER 2018.

**In the presence of:**

Plaintiffs      Absent

Defendants      Absent

Counsel      Ms. Ayieta for Bundotich for Plaintiff

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**