



**REPUBLIC OF KENYA**

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

**ELC CASE NO.45 OF 2016**

**JOHN OKULO (Suing through his duly  
appoint attorney – NOAH OKULO).....PLAINITFF/APPLICANT**

**VERSUS**

**STANLEY MIYUMO.....DEFENDANT/RESPONDENT**

**RULING**

1. **John Okulo**, suing through his duly appointed attorney – **Noah Okulo**, the Applicant, through notice of motion dated 26<sup>th</sup> February 2016 seeks for temporary injunction against **Stanly Moyomo**, the Respondent, restraining him from interfering with and or trespassing and or encroaching on the Applicant's land parcel **Kisumu/Nyahera/2400**. The Applicant relies on the four grounds on the notice of motion which is also supported by the undated supporting affidavit filed on 4<sup>th</sup> March 2016 and supplementary affidavit sworn on 6<sup>th</sup> July 2016.
2. The notice of motion is opposed by the Respondent through the replying affidavit sworn on 11<sup>th</sup> May 2016.
3. The counsel for the Applicant and Respondent filed written submissions dated 7<sup>th</sup> October 2016 and 22<sup>nd</sup> September 2016 respectively.
4. The issues for determination are as follows:
  - a) Whether the applicant has established a prima facie case with a probability of success for temporary injunction to issue at this interlocutory stage.
  - b) Who pays the costs.
5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence, the written submission and come to the following finding;
  - a) That though the applicant has availed, through the annexures to the supporting and supplementary affidavit, evidence to confirm that the matter had been handled by the provincial Administration, the Land Registrar and Surveyor and that a finding had been made that the Applicant's land had been encroached into. The area of encroachment is captured as the shaded portion in the diagram or map annexed. The acreage of the shaded portion has not been given in

the report dated 13<sup>th</sup> January 2016. It would therefore be difficult to order compliance on the basis of the finding contained in the said report without specifying the acreage of encroachment.

b) That the Respondent has stated that his land does not share a boundary with that of the applicant and the court takes that to mean that the Respondent has disputed the encroachment claim. The court has noted that the applicant pleadings did not disclose when the encroachment occurred but going by the letter from the chief dated February 2015, the encroachment issue appear to have existed for some years and there is no reason why temporary injunction orders should be pursued now instead of putting efforts to comply with **Order 11** of the Civil Procedure Rules for the main suit to be heard and determined without undue delay.

6. That for reasons set out above, the court finds that the notice of motion dated 26<sup>th</sup> February 2016 has no merit and is dismissed with costs.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 18<sup>TH</sup> DAY OF JANUARY 2017**

In presence of;

Applicant present

Respondent present

Counsel Mr. Odeny for the Respondent.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**18/1/2017**

18/01/2017

S.M. Kibunja Judge

Appellant present

Respondent present

Mr Odeny for the Respondent

Appellant- My advocate is in another court.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**18/1/2017**

Court: Ruling dated and delivered in open court in presence of both parties and Mr Odeny for

Respondent.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**18/1/2017**