



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC CASE NO.883 OF 2015**

**[FORMERLY HIGH COURT CIVIL SUIT NO.140 OF 2010]**

**DR. GEORGE TIMOTHY OPANDE.....PLAINTIFF**

**VERSUS**

**EZEKIEL M. OKEMWA.....1<sup>ST</sup> DEFENDANT**

**OLANG LYNDA ADEDE.....2<sup>ND</sup> DEFENDANT T**

**ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. **Dr. George Timothy Opande**, the plaintiff, filed the notice of motion dated 12<sup>th</sup> July 2016 seeking to restrain Olang Lynda Adede, the 2<sup>nd</sup> defendant, from wasting, destroying or degrading or interfering with his quiet enjoyment, possession and occupation of land parcel **Kisumu/Konya/36**, the suit property, pending the hearing and determination of this suit. The application is based on the nine grounds on its face and supported by the plaintiff's affidavit sworn on the 12<sup>th</sup> July 2016.
2. The application is opposed by the 2<sup>nd</sup> defendant through her replying affidavit sworn on the 27<sup>th</sup> September 2016.
3. The application was heard on 28<sup>th</sup> November 2016. The counsel for the 2<sup>nd</sup> Defendant made his submissions first as the Plaintiff and his counsel had not arrived in court when the hearing commenced. The court also heard the submission by the Plaintiff after his counsel failed to attend court.
4. 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 to issue at the interlocutory stage.
  - b. What orders to issue.
  - c. Who pays the costs.
5. The court has considered the grounds on the notice of motion, affidavit evidence, submissions tendered

and come to the following conclusions;

a. That from the documents of title availed to this court, land parcel **Kisumu/Konya/36** got registered in the name of the Plaintiff on the 23<sup>rd</sup> July 2019, while **Kisumu/Konya/34** got registered in the name of the 2<sup>nd</sup> Defendant on 23<sup>rd</sup> June 2010.

b. That land parcels **Kisumu/Konya/36 and 34** are indicated to be 0.25 and 0.11 hectares respectively.

c. That the Land Registrar's report dated 3<sup>rd</sup> May 2012, obtained through the court order of 1<sup>st</sup> March 2012 confirms the existence of a boundary dispute involving the two parcels among others, and recommended that it "be resolved by amending the map to suit the current ground position as per mutual agreement entered between proprietors of **KSM/Konya/34 and KSM/Konya/33.**" That however, there is no indication as to whether the report's recommendation was adopted as an order of the court and or implemented.

d. That in view of the finding in (c) above, and noting that the portion of land where the 2<sup>nd</sup> Defendant was carrying on developments is claimed by the Plaintiff as part of his land, it is only fair that any further developments on the disputed portion be stopped pending the determination as to whether the portion falls on parcel **Kisumu/Konya/34 or 36.**

6. That flowing from the foregoing the court finds merit in the notice of motion dated 12<sup>th</sup> July 2016 and is allowed in terms of prayer 3 pending hearing and determination of the suit. The costs will be in the cause.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 29<sup>TH</sup> DAY OF MARCH 2017

In presence of;

Plaintiff Present

Defendants Absent

Counsel M/S Odhong for the Plaintiff

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**29/3/2017**

29/3/2017

S.M. Kibunja Judge

Oyugi court assistant

Plaintiff present

M/S Odhong for the Plaintiff

Court: The ruling dated and delivered in open court in presence of

M/S Odhong for the Plaintiff and the Plaintiff.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**29/3/2017**