



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO.154 OF 2016**  
**LAWRENCE G. WANYAMA OSAMA.....PLAINTIFF**  
**VERSUS**  
**BENEDICT OPATA**  
**WAMBANI WERE (suing on behalf of themselves and on**  
**behalf of Mumias Teacher Society).....DEFENDANTS**

**RULING**

1. This ruling relates to the notice of motion dated 29<sup>th</sup> June 2016 in which **Lawrence G. Wanyama Osama**, the Applicant, seeks for temporary injunction restraining **Benedict Opata and Wambani Were**, the Respondents, sued on behalf of themselves and on behalf of Mumias Teachers society, from trespassing, constructing working, laying claim or in any other way interfering with land parcel **South Wanga/Lureko/3297** pending the hearing and determination of this suit. The notice of motion is based on the two grounds on its face and is supported by the affidavit of the Applicant sworn on the 29<sup>th</sup> June 2016.
2. The notice of motion is opposed by the Respondents through the replying affidavit sworn by **Leonard Wambani**, the Honorary Secretary to the Defendant's society, sworn on 11<sup>th</sup> July 2016.
3. The counsel for the parties entered consent on the 10<sup>th</sup> October 2016 to file written submissions on the application. The court set timelines and by 17<sup>th</sup> October 2016 when the matter came up for mention, only the Defendants counsel had filed their written submissions dated 28<sup>th</sup> October 2016.
4. The following are the issues for the determination of the court;
  - a) Whether the Plaintiff has established a prima facie case with a probability of success for temporary injunction orders 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 by both sides, written submission by the Defendants counsel and come to the following determinations;

a) That going by the copy of certificate of official search issued on 28<sup>th</sup> June 2016 and title deed issued on 24<sup>th</sup> May 2013, land parcel **South Wanga/ Lureko/3297**, is registered in the names of the Applicant. The title deed indicates that the land is a subdivision of land parcel 2863 and that it was first registered on the 12<sup>th</sup> May 2010.

b) That the Respondents reply to the Applicant's claim on ownership is that land parcel **South Wanga/Lureko/2863**, from which the suit land was subdivided from, is part of their land parcel L.R. 8056/317 which was allotted to them in 1997.

c) That the Respondents have commenced a permanent construction project on its land which includes the land the Applicant claims is the suit land and hence this suit and application.

d) That it is desirable that both parties and any other that may be enjoined on application, or through the courts own motion, be heard so as to settle the position of the ground boundaries between the Applicant's and Respondents land. That it will also be important to settle whether the Applicant's land (suit land) is part of the Respondents land.

e) That in view of the finding (d) above and the nature of the developments being carried out by the Respondents that are likely to permanently alter the physical condition of the land, it is necessary that temporary orders of injunction be issued restraining the Respondents or those claiming through them from continuing, or doing any other construction on land parcel **South Wanga/Lureko/3297** pending the hearing and determination of this suit.

f) That the subject matter of this suit is within the jurisdiction of Environment and Land Court, Kakamega which is now operational and should be transferred to that court for hearing and determination.

6. That having found as above, the court orders as follows:

a) That the Respondents by themselves or those claiming from them are hereby restrained from any further construction on land parcel **South Wanga/Lureko/3297** pending hearing and determination of this suit.

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

c) That the court on its own motion, hereby transfers this suit to **Kakamega, Environment and Land Court** for hearing and determination as the subject matter falls within the territorial jurisdiction of that court.

d) That the matter be mentioned before Kakamega Environment and Land Court for directions on the 29<sup>TH</sup> March 2017.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 15<sup>TH</sup> DAY OF MARCH 2017**

In presence of;

Plaintiff Absent

Defendants Absent

Counsel Mr. Namatsi for the Plaintiff

Mr. Ndobi for the Defendants.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**15/3/2017**

15/3/3017

Before Hon. S.M. Kibunja Judge

Court assistant N.O. Oyugi

Mr. Namatsi for Plaintiff

Mr. Ndobi for the Defendants

Order: Ruling dated and delivered in open court in presence of Mr. Namatsi and Ndobi for the Plaintiff and Defendants respectively.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**15/3/2017**