



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO.181 OF 2016

STEWART JALANG’O AGOT.....APPLICANT

VERSUS

GEORGE OKOTH ODONGORESPONDENT

RULING

1. **Stewart Jalang’o Agot**, the Applicant, vide notice of motion dated 25th July 2016 filed contemporaneously with the suit commenced through the plaint of even date, prays for temporary injunction restraining **George Okoth Odongo**, the Respondent, from “trespassing, entering, encroaching, clearing or depositing any construction materials or equipment, building or putting up any building or structure or in any way whatsoever, interfering with the Plaintiff’s possession and occupation into land parcel L.R. No. **North Sakwa.Maranda/1622**”, pending hearing and determination of this suit among other prayers. The application is based on the eight grounds marked (1) to (8) on its face and supported by the affidavit of the Applicant sworn on 25th July 2016. The following are a summary of the deposition by the Applicant;

a. That he is the registered proprietor of the suit land since 13th February 2015 and the title in his name was issued on the 26th February 2015 as per copy of the title.

b. That the Respondent entered onto the suit land without permission and put up a mabati structure on the 9th July 2016. That he reported to Bondo Police Station under O.B. No. 24/14/07/2016 and was advised to institute a civil action against the Respondent.

2. The application is opposed by the Respondent through his replying affidavit sworn on the 19th August 2016 whose depositions are as follows:

a. That the applicant is his uncle, being a brother to his late father Edwin Okelo Agot Okech alias Okelo Agot Akech, who died on 9th April 2011. That his late father, Applicant and John Odhiambo Agot were brothers and sons to the late James Aget Okech.

b. That his grandfather had given his sons their respective parcels of land before his death. He provided a copy of the register for parcel North **Sakwa/Maranda/1621, 1622** and **13**. The register for parcels 1621 shows that it was transferred from **James Agot Okech** to **John Odhiambo Agot** on 30th September 1994. The register for parcel **1622** indicates that it was initially registered in the names of Okelo Agot Okech on 30th September, after being subdivided from parcel 11, and later

on 13th February 2015, it was registered in the names of **Stewart Jalongo** (Applicant). The register for parcel 13 shows it was first registered in the names of **Jalongo Agot** on the 1st August 1978 who later corrected the name on 1st October 1981 to read Stewart Jalongo Agot (the Applicant). It further shows that the title was closed on 30th July 2012 upon being subdivided into parcels **2145 to 2147** which were transferred to **Dennis Paul Jalongo, Collins Philip Otieno Jalongo** and **James Evans Jalongo** respectively on 19th February 2013.

c. That after the death of his father, the Respondent decided to establish his home and moved to land parcel North **Sakwa/Maranda/1622** in 2015 as it belonged to the estate of his late father.

d. That in April 2016, the Respondent started bringing building materials to the land but the Applicant became hostile towards him. That on checking with the lands office he discovered that the Applicant had procured the registration with the suit land through Kisumu H.C. SUC. Cause No.1349 of 2013 without making disclosure that the original owner who was deceased had left children namely Dovine Atieno, George Okoth, Beatrice Adhiambo and Risper Akinyi (deceased).

e. That he lives on the land and cannot be restrained.

f. That he has filed summons for revocation of grant dated 1st August 2016 in Kisumu H.C. SUCC. Cause No.1349 of 2013 and that this application for temporary injunction should not be allowed.

3. The Applicant filed a supplementary affidavit sworn on the 23rd August 2016 in response to the replying affidavit deponing as follows:

a. That he is not the uncle to the Respondent and that James Agot Akech was not a grandfather to the Respondent.

b. That land parcel **North Sakwa/Maranda/11** was registered in the names of his father and son called Edwin Okello Agot and was subsequently subdivided into parcels **1621 and 1622**. That parcel 1621 was registered in the names of his father and John Odhiambo Agot while parcel 1622 was registered in the name of Edwin Okello Agot.

c. That the Respondent's late mother, Rose Atieno, was not married to Edwin Okello Agot who died without leaving any children in 2011.

d. That the Respondent's father is one Aloys Odongo.

4. The Respondent filed a further affidavit sworn on the 16th September 2016 deponing to the following;

a. That his mother, Rose Atieno, married Edwin Okello and their marriage was solemnized in church

b. That his parents had problems and his mother returned to her father, Aloys Odongo with her children when they were young.

c. That the Respondent returned to his father after the 2007-2008 post-election violence while his sister, Beatrice Adhiambo Akello had returned to her father earlier in 2004.

5. The Applicant's counsel filed written submissions dated 17th October 2016 while the Respondent's counsel filed theirs dated 8th November 2016.

6. The following are the issues for the court's determination;

a. Whether the Applicant has established a prima facie case with a probability of success for

issuance of temporary injunction orders at this stage.

b. Who pays the costs.

7. The court has considered the grounds on the notice of motion, the affidavit evidence by both parties, the written submissions by both counsel, the pleadings filed and come to the following determination;

a. That the Applicant has acquired proprietorship of land, parcel **North Sakwa/Maranda/1622**, which is the suit land, through transmission vide the grant in Kisumu H.C. Succession Cause No.1349 of 2013 issued on 30th April 2014 and confirmed on 15th December 2014.

b. The Respondent was already in possession of the said land or a portion of it by the time this suit was filed on 25th July 2016. {The Respondent indicated that he had established a home on the land in 2015 while the Applicant indicates that the Respondent entered onto the land on 9th July 2016}.

c. That the Respondent has established that he has filed summons to revoke the grant under which the Applicant acquired registration with the suit land. That application was pending when the notice of motion was being heard and fixed for ruling. The court has not been briefed of the progress in the said revocation proceedings.

d. That as the Respondent has in his statement of defence and counterclaim dated 1st August 2016 lodged his own claim against the Applicant over the suit land, and further considering that his summons for revocation of the grant is still pending before the High Court, and further noting that he was already in occupation of the land when this suit was filed, a grant of an order in terms of prayer 3 would result to his being evicted, which would be undesirable result. That it is however important to maintain the status quo by stopping any further construction of a permanent nature on the suit land, pending hearing and determination of the Respondent's summons for revocation in Kisumu H.C.SUCC. Cause No.1349 of 2013 which should be heard and decided before this suit continues to hearing.

8. That flowing from the foregoing the court orders as follows:

a. That the notice of motion dated 25th July 2016 is hereby marked settled through an order that parties do maintain the status quo existing at the time this suit was filed on the use and occupation of land parcel North **Sakwa/Maranda/1622**. That both parties are therefore hereby restrained from any or further construction of a permanent nature that is likely to alter the value and physical condition of the suit land.

b. That the status quo order in (a) above do remain in force pending the hearing and determination of the Respondent's revocation of the grant proceedings in Kisumu H.C. Succession Cause No.1349 of 2013.

c. That the matter be fixed for mention to find out the progress of the revocation proceedings.

d. That the costs of the notice of motion be in the cause.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 1ST DAY OF MARCH 2017

In presence of;

Applicant Present

Respondent Absent

Counsel Mr. Ngala for Odongo for Applicant

Mr. Anyul for the Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

1/3/2017

1/3/2016

S.M. Kibunja Judge

Oyugi court Assistant

Mr. Ngala for Odongo for Plaintiff

Mr. Anyul for Defendant

Court: Ruling dated and delivered in open court in presence of the Plaintiff, Mr. Ngala for Odongo for Plaintiff and Mr. Anyul for the Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

1/3/2017