



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.188 OF 2016

VINCENT OTIENO OPOLO.....PLAINTIFF

VERSUS

JOHN OMOLO OYANGEDEFENDANT

RULING

1. **Vincent Otiemo Opolo**, the Applicant, by notice of motion dated 16th August 2016, seeks for an order of injunction restraining **John Omolo Oyange**, the Respondent, from trespassing alienating or interfering with the Applicant's quiet enjoyment of land parcel **Kisumu/Kochogo/909**, pending the hearing and determination of the suit. The application is based on the four grounds on its face and supported by the affidavit sworn by the Applicant on the 16th August 2015.

2. The notice of motion is opposed by the Respondent through his replying affidavit sworn on the 23rd August 2016 and further affidavit sworn on the 26th September 2016.

3. The notice of motion came up for hearing on the 9th November 2016 when direction on filing written submission were given. The applicant's counsel filed their submissions dated 17th November 2016. That when the matter came for mention on the 16th February 2017, counsel for the applicant sought for a date for ruling after informing the court that they served Respondent's counsel with their submissions on the 22nd November 2016 and that none had been filed and served by the Respondent's counsel. The Respondent and his counsel were also absent.

4. The following are the issues for the determination by the court:

- a) Whether the Applicant has established a prima facie case with a probability of success for temporary injunction order to issue at the interlocutory stage.
- b) Who pays the costs.

5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence, the submissions by the Applicant's counsel and come to the following determinations;

- a) That the Respondent is the registered proprietor of land parcel **Kisumu/Kochogo/909**, having been so registered on the 6th October 1986 as confirmed by the certificate of official search issued on the 6th July 2016 and annexed to the supporting and replying affidavits.

b) That the Applicant has lodged a claim over the suit land through the originating summons dated 29th July 2016 under adverse possession. The Applicant has further annexed a

copy of photograph of a house with damaged walls which he depones was damaged by the Respondent after being served with the originating summons.

c) That the Respondent is facing criminal charges over the alleged damage to the house and it is only just that the applicant be allowed to continue using the suit land, as he did when he filed the originating summons, awaiting the determination of this suit.

d) That in view of the forgoing, the Applicant's notice of motion has merit and the Respondent's should be restrained.

6. That as shown above, the Applicant's notice of motion has merit and is allowed in terms of prayer 4 with costs in the cause.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 31ST DAY OF MAY 2017

In presence of;

Plaintiff

Defendant

Counsel

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE