



**REPUBLIC OF KENYA**

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

**ELC CASE NO.237 OF 2016**

**LEONIDA SANGONDA AONO .....1<sup>ST</sup> PLAINTIFF**

**GEORGE ODHIAMBO AONO.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ELISHA OTIENO OCHOLA .....1<sup>ST</sup> DEFENDANT**

**KENGA KALUME NURU.....2<sup>ND</sup> DEFENDANT**

**BERTRAND LUBANGA SAYWA .....3<sup>RD</sup> DEFENDANT**

**RULING**

1. **Leonida Sangonda Aono and George Odhiambo Aono**, the Plaintiffs, seeks for a temporary injunction order to restrain **Elisha Otieno Ochola, Kenga Kalume Nuru and Bertrand Lubanga Gaywa**, the Defendants, by themselves or their agents “from entering upon, taking possession, selling, mortgaging, charging, leasing, transferring, carrying out any construction thereon or excavation therefrom, fencing or carrying out any other activity whatsoever on **L.R. No Kisumu/Chuga/ 2** or any part thereof, alienating or interfering by any means howsoever, with the property or any part thereof till the hearing and final determination of the suit.” They also pray for costs. The application is based on the eleven grounds marked (a) to (k) on its face and is supported by the affidavits sworn by the Plaintiffs on the 5<sup>th</sup> September 2016. The Defendants were served through advertisement in a newspaper following the court order of 26th September 2016.

2. The application is opposed by the 3<sup>rd</sup> Defendant through his replying affidavit sworn on the 11<sup>th</sup> November 2016.

3. The application came up for hearing on the 13<sup>th</sup> February 2017 when Mr. Ochuka and Wesonga, learned counsel for the Plaintiffs and 3<sup>rd</sup> Defendant respectively, tendered their oral rival submissions.

4. The following are the issues for the courts determination,;

- a) Whether the Plaintiffs have established a prima facie case with a probability of success for temporary injunction order to issue at this interlocutory stage.
- b) What order to issue.
- c) Who pays the costs.

5. The court has after considering the grounds on the notice of motion, affidavit evidence and oral submissions by both counsel come to the following conclusions;

a) That from the copy of the register for land parcel **Kisumu/Chuga/2**, the suit land, that has been attached to the Plaintiffs affidavits, the land was first registered on the 14<sup>th</sup> December 1983 in the name of Henry Aono. That the said Henry Aono is reported to be the husband and father to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs respectively and that he died on the 25<sup>th</sup> October 1984 as confirmed in the certificate of death No.121537 issued on the 7<sup>th</sup> May 1985.

b) That the Plaintiffs case is that Henry Aono died on the 25<sup>th</sup> October 1984 while still being the registered proprietor of the suit land. That they have been utilizing the land for farming as the legal and beneficial owners without any interruptions until in the 21<sup>st</sup> August 2016 when agents of the 3<sup>rd</sup> Defendant went to take possession prompting this suit. That when they obtained a copy of the register, they discovered that the land had been transferred to the names the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the 5<sup>th</sup> March 1992, 27<sup>th</sup> April 2004 and 16<sup>th</sup> October 2013 respectively. That it is the Plaintiffs case that registration of the suit land with the Defendants was tainted with fraud, was irregular, unlawful and unprocedural as the succession cause in respect of the estate of the late Henry Aono, who was the first registered owner, has never been done. That though the 3<sup>rd</sup> Defendant has raised the defence of being a bona fide purchaser for value, the fact that there is no indication of how the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acquired registration with the suit land under the column headed “**consideration and Remarks**” in the register means the Plaintiffs claim is not unreasonable. That it is only therefore fair that the status quo be maintained pending the hearing and determination of this case on merit.

6. That the notice of motion dated 5<sup>th</sup> September 2016 is found to be meritorious and is granted in terms of prayers (3) with costs in the cause.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF MAY 2017**

In presence of;

Plaintiffs 1<sup>ST</sup> Plaintiff present

Defendants Absent

Counsel Mr. Onsongo for Ochuka for Plaintiffs

Mr. Ayayo for Wasonga for 3<sup>rd</sup> Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**24/5/2017**

24//5/2017

S.M. Kibunja Judge

Oyugi court assistant

Mr. Onsongo for Ochuka for Plaintiff/Applicant

Mr. Ayayo for Wasonga for 3<sup>rd</sup> Defendant

Court: Ruling dated and delivered in open court in presence of

1<sup>st</sup> Plaintiff, Mr. Onsongo for Ochuka for Plaintiff and Mr. Ayayo for Wasonga for 3<sup>rd</sup> Defendant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**24/5/2017**