



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.60 OF 2015

MARY BEATRICE RAGOT KAGALI.....PLAINTIFF

VERSUS

Paul ODHIAMBO YALA.....1ST DEFENDANT

IRENE ATIENO.....2ND DEFENDANT

RULING

1. **Mary Beatrice Ragot Kagali**, the Plaintiff, vide the amended notice of motion dated 12th March 2015, seeks for an interim order of injunction directed to the Defendants **Paul Odhiambo Yala and Irene Atieno**, their agents, servants and/or employees, restraining them forthwith from selling the suit property known as **Kisumu /Manyatta A/4335 and 4336**. The application is based on the five grounds marked

(a) to (e) and is supported by the Plaintiff's affidavit sworn on the 5th March 2015.

2. The application is opposed by 2nd Defendant, Irene Atieno, through her replying affidavit sworn on the 14th May 2015.

3. The application came up for hearing on the 14th July 2016 and counsel for the parties agreed to file and exchange written submissions. The counsel for the Plaintiff filed their submission dated 10th October 2016. That even though the court was told on 31st January 2017 that both parties had filed their submissions, none was traced from the record from to the Defendants.

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 after considering the grounds on the notice of motion, affidavit evidence, and submission by Plaintiff's counsel come to the following determination;

a) That though the two parcels of land were registered in the name of the 2nd Defendant on the 23rd December 2008, the registration has been challenged by the Plaintiff through the suit filed vide the

plaint dated 5th March 2015 and it is only fair and just that their legal status be maintained pending the hearing and determination of the suit.

b) That the said parcels had been previously registered in the names of **Elijah Yala Owoko and Leonida Akinyi Yala**, who died on the 5th July 2007 and 19th May 2008 respectively, as shown in the certificates of death annexed to the supporting affidavit. That it is therefore important to ensure the title to the two parcels of land do not change before the court take evidence from the parties and determine whether the 2nd Defendant's titles were regularly, lawfully and procedurally obtained. That is crucial as the 1st Defendant has yet to file his pleadings and did not file any response to the notice of motion.

6. That flowing from the foregoing the court finds that the amended notice of motion dated 12th March 2015 has merit and is allowed in terms of prayer (3) with costs in the cause.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 10TH DAY OF MAY 2017

In presence of;

Plaintiff Absent

Defendants Absent

Counsel Mrs. Onyango for the Plaintiff

Mr. Marwa for the 2nd Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

10/5/2017

10/5/2017

S.M. Kibunja Judge

Oyugi court assistant

Mr Marwa for the 2nd defendant

Mrs. Onyango for the Plaintiff

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

Mrs. Onyango and Mr. Marwa for the Plaintiff and 2nd Defendant respectively.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

10/5/2017