



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.66 OF 2015

NYAJOWI ANGUJO.....PLAINTIFF

VERSUS

FREDRICK MAWEGA ANJUGO.....DEFENDANT

RULING

1. **Nyajowi Angujo**, the Plaintiff, filed the notice of motion dated 6th March 2015 seeking for temporary injunction against **Fredrick Mawega Angujo**, the Defendant, restraining him, his agent, representatives, assigns or any other person acting through his directions from trespassing, selling, subdividing, charging or in any way dealing and or interfering the Plaintiff's parcel of land number **Kisumu/Kasule/6700** and 6366 pending the hearing and determination of the suit. The Plaintiff listed seven grounds marked (a) to (g) on the application which is supported by his affidavit sworn on the 9th March 2015.

2. The application is opposed by the defendant through his replying affidavit sworn on the 22nd October 2015.

3. The application came up for hearing on the 10th May 2016 when counsel for the parties agreed to file and exchange written submissions. The counsel for the Plaintiff filed theirs dated 12th October 2016 while the Defendant's counsel filed theirs dated 4th February 2017.

4. The issues for the determination by the court are;

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 order to issue.

c) Who pays the costs.

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

a) That the two parcels of land are evidently registered in the names of **Nyajowi Angujo**, the Plaintiff herein, and in terms of **Section 26** of the Land Registration Act No.3 of 2012, the Plaintiff is the absolute and indefeasible owner until and unless his title is successfully impugned in accordance with the law.

b) That flowing from (a) above the Plaintiff is entitled to the rights and privileges of a registered proprietor of land as set out under **Sections 24 and 25** of the said Act.

c) That the Defendant is admittedly the son of the Plaintiff. That the Defendant has deposed that his mother resides on land parcel **Kisumu/Kasule/6700** while his late elder brother's family resides on land parcel **Kisumu/Kasule/6366**.

That the Defendant's deposition on the foregoing has not been controverted by the Plaintiff and the court finds that the Defendant may have genuine reasons to be on the two parcels of land like when visiting his mother and late brother's family.

d) That while it may be true that the Plaintiff gave the Defendant two parcels of land, that he later sold, the Defendant is still a member of the Plaintiff's family and may not be entirely locked out of accessing the family lands for the usual family and social interactions. That should Defendant acts of omission in the use of the family land leads to legally recognized criminal offences, then the Plaintiff or any other family member would be at liberty to seek redress from the relevant criminal justice agencies, like the police.

6. That flowing from the foregoing the court finds that the notice of motion dated 6th March 2015 has merit and is allowed in terms of prayer 3 limited to restraining the Defendant, through himself or his agents, from selling, subdividing, charging or in any other way disposing of the Plaintiff's interests in land parcel **Kisumu/Kasule/6700 and 6366** pending the hearing and determination of this suit. The costs of the application will 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

Defendant Absent

Counsel Mr Baganda for Anyul for Defendant/Respondent

S. M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

10/5/2017

10/5/2017

SM. Kibunja Judge

Oyugi Court Assistant

Parties absent

Mr. Baganda for Anyul for Respondent

Court: Ruling delivered in open court in presence of Mr. Baganda for Anyul for the Respondent/Defendant

S. M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

10/5/2017