



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.27 of 2016

SOLOMON OUKO.....PLAINTIFF

VERSUS

JOYCE PENINA ADHIAMBO.....DEFENDANT

RULING

1) **Solomon Ouko**, the Plaintiff, vide notice of motion dated 16th March 2016 seeks for temporary injunction restraining **Joyce Penina Adhiambo**, the Defendant, by herself or agents from claiming title or selling, disposing interfering with, remaining in occupation, or doing any act on land parcel **Kisumu/Manyatta 'A' 3298** pending the hearing and determination of this suit. The application is based on the three grounds on its face and supported by the affidavit sworn by **Solomon Ouko** on the 16th March 2016.

2) The application is opposed by the Defendant through her replying affidavit sworn on the 3rd June 2016.

3) The Plaintiff filed a further affidavit sworn on 26th September 2016 in reply to the replying affidavit.

4) The Defendant filed a reply sworn on 31st October 2016 to the further affidavit.

5) The counsel for the Plaintiff filed the written submissions dated 6th December 2016 on the 7th December 2016 while the Defendant's counsel filed theirs dated 20th February on the same date.

6) The following are the issues for determination by the court;

a) Whether the Plaintiff has established a prima facie case with a probability of success for temporary injunction orders to issue at this interlocutory stage.

b) What orders to issue.

c) Who pays the costs.

7. The court has carefully considered the grounds on the notice of motion, affidavit evidence, submissions by both counsel and come to the following conclusions:

a) That whereas the Plaintiff claim over a 0.02 hectare portion of land parcel **Kisumu/Manyatta 'A'/3298** is based on the land sale agreement of 3rd July 2008, the copy of the register of the land that is annexed to the supporting affidavit indicates that the land was as of that time in the name of

Samwel Ndalo Wambare who was reportedly deceased. That it was not until the 16th February 2009 that the Defendant got registered with the land.

b) That the Defendant has disputed entering into the land sale agreement with the Plaintiff and the court has to wait for evidence to be tendered to decide on the disputed sale agreement.

c) That the confirmed grant under which the Defendant obtained transmission of the suit land to her name has not been availed to the court. The date of the confirmed grant is relevant in establishing the date the Defendant acquired capacity to distribute or dispose the property of the estate. That again need to await determination after hearing of the main suit.

d) That though none of the parties addressed the court on whether the sale of the land was subject to **Section 6** of the Land Control Act chapter 302 of the Laws of Kenya, the court notes that no consent to transfer the land has been exhibited by the Plaintiff. That in case the land is agricultural, then the sale agreement may have become void and the Plaintiff's recourse may be in refund of money paid, if any.

e) That from the affidavit evidence availed, the Plaintiff has never taken possession or occupation of the portion of the land subject matter of the sale agreement and he does not therefore stand to suffer any loss that cannot be computed into monetary terms.

f) That the Plaintiff do not have title to the land as of today and the court is of the view that on the basis on the affidavit evidence so far availed, he has failed to established a prima facie case on which temporary injunction order can issue.

8. That flowing from the foregoing, the Plaintiff's notice of motion dated 16th March 2016 is without merit and is dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 31ST DAY OF MAY 2017

In presence of;

Plaintiff Absent

Defendant Absent

Counsel M/S Adwar for the Plaintiff

Mr. Achura for Anyango for Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

31/5/2017

31/5/2017

S.M. Kibunja Judge

Oyugi court assistant

Parties absent

Mr. Achura for Anyango for Defendant/Respondent

M/S Adwar for Plaintiff/Applicant

Court: Ruling dated and delivered in open court in presence of M/S Adaw for the Plaintiff and Mr. Achura for Anyango for Defendant.

S. M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

31/5/2017