



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 824 OF 2016**

**WILFRED KIPTUM KIMALAT (SUING AS THE APPOINTED ATTORNEY OF JAMES KIPKOECH KIMALAT)..... PLAINTIFF**

**VERSUS**

**WYCLIFFE ONYANGO.....**  
**.....1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....**  
**.....2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, NAIROBI .....**  
**.....3<sup>RD</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....**  
**.....4<sup>TH</sup> DEFENDANT**

**RULING**

The Plaintiff seeks orders of injunction to restrain the 1<sup>st</sup> Defendant, his agents or servants from trespassing, developing or dealing with the land known as Nairobi Umoja/ Block 107/1/1131(“the Suit Property”), until the suit is heard through the application dated 14<sup>th</sup> July 2016. He also seeks orders to stay registration of any dealings on the Suit Property and an order to evict the 1<sup>st</sup> Defendant pending hearing and determination of this suit. This being an interlocutory application, the court will consider prayers 4 and 5 of the application. The 6<sup>th</sup> prayer for eviction cannot be granted on a temporary basis since an eviction order is final.

The application was served on the 2<sup>nd</sup> to 4<sup>th</sup> Defendants. The 1<sup>st</sup> Defendant could not be found for service although he is said to be constructing on the Suit Property. The Plaintiff sought and obtained orders to serve the 1<sup>st</sup> Defendant by substituted means. The 1<sup>st</sup> Defendant was served by an advertisement placed in the *Daily Nation* of 6<sup>th</sup> June 2017. The 1<sup>st</sup> Defendant did not enter appearance or file any papers in court. Mr. Terrell who appears for the 2<sup>nd</sup> to 4<sup>th</sup> Defendants did not oppose the application as the orders sought were against the 1<sup>st</sup> Defendant.

The Plaintiff who swore the affidavit in support of the application claims to hold a power of attorney from James Kipkoech Kimalat, the registered owner of the Suit Property. The Plaintiff annexed a copy of the certificate of lease over the Suit Property dated 15th January 1998 together with copies of receipts issued to James Kipkoech Kimalat for the payment of rates. The Plaintiff claims that the 1<sup>st</sup> Defendant has commenced construction on the Suit Property and is apprehensive that the Suit Property may be transferred before this suit is determined. The applicant wrote to the Cabinet Secretary for Lands on 23<sup>rd</sup> July 2014 requesting for investigations into the allocation of the Suit Property to other parties. The County Government of Nairobi wrote to the Plaintiff on 18<sup>th</sup> August 2014 and confirmed that from its records, the Suit Property is registered in the name of James Kipkoech.

It is necessary to restrain dealings on the Suit Property until the suit is heard and determined. The court grants prayers 4 and 5 of the application. The orders will be enforced by the Officer Commanding Station,

Buru Buru. The Plaintiff will have the costs of the application.

**Dated and delivered at Nairobi this 27<sup>th</sup> day of June 2017.**

**K. BOR**

**JUDGE**

In the presence of: -

Nyantika for the Plaintiffs

No appearance for the Defendants

Mr. V. Owuor- Court Assistant