



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.90 OF 2015

RELI SAVINGS CREDIT CO-OPERATIVE SOCIETY LTDPLAINTIFF

VERSUS

SINOHYDRO CORPORATION LTDDEFENDANT

RULING

1. **Reli Savings Credit Cooperative Society Limited**, the Plaintiff, filed the notice of motion dated 10th April 2015, brought under **Section 1A, 1B, 31 and 63 of the Civil Procedure Act and Order 40 Rule 1 and 2 of Civil Procedure Rules** seeking to restrain **Synohydro Corporation Ltd**, the Defendant, from trespassing upon, harvesting murram or in any way interfering with the Plaintiff's parcel of land number **Kanyakwar Residential plots/Kisumu Block 17**, pending the hearing and determination of this suit. The application is based on the seven grounds on the notice of motion and supported by the affidavit of Bob Charles Auch, the Plaintiff's Chairman, sworn on the 13th April 2015.

2. The application is opposed by the defendant through the grounds of opposition dated 22nd June 2015.

3. The application came up for hearing on the 14th July 2016 when Mr. Yogo and M/S Omboto for Odeny, learned counsel for the Plaintiff and Defendant respectively, agreed to file written submissions. The counsel for the Plaintiff filed their submissions dated 19th November 2016 while that of the Defendant filed theirs dated 11th January 2017.

4. The issues for determination are as follows;

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

b) Who pays the costs.

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

a) That while the Plaintiff seeks to restrain the Defendant from the parcel of land described as Kanyakwar Residential Plots/Kisumu Block 17 which they have deponed at paragraph 2 of the supporting affidavit that they have been in possession of since 22nd February 1994, they did not annex or avail any documentary evidence of title, like for example a letter of allotment, lease,

certificate of lease or title to that land. That out of the eleven documents annexed to the supporting affidavit, only one document which is the letter dated 20th January 2014 addressed to the Chairman National Land Commission by one Anne A. Alula, signing for Director of Survey, has made reference to **Kisumu Municipality/ Block 17**.

b) That the Letter dated 20th January 2014 does not suffice to be taken as the Plaintiff's title to Kisumu Municipality Block 17 as it was a proposal by the writer to the National Land Commission that Kanyakwar Reli Sacco be given that plot as Kisumu Municipality Block 16 had been registered with Mava Women Group earlier. That had that recommendation have been accepted and acted upon, a document of title dated after that letter would have been issued to the Plaintiff as evidence of entitlement and the Plaintiff would availed it to the court.

c) That the letter of allotment dated 22nd February 1994 under reference 30973/LI/155 allocating Reli Co-operative society us Residential Plot -Kisumu Municipality measuring 7.2 hectares, and the report by Geostate Development Services dated 29th May 2014 among the documents attached to the supporting affidavit are all in respect of Kisumu Municipality Block 16, which is not the subject matter of the suit an cannot therefore be evidence in support of the prayers in the notice of motion.

d) That the Plaintiff have failed to establish ownership of the land from which they want the Defendant to be restrained. They have therefore failed to meet the threshold set in **Giella –V- Cassman Brown & Co Ltd** (1975) E.A. 358 which is a prerequisite to issuing of temporary injunction at the interlocutory stage.

6. That for the reasons above, the notice of motion dated 10th April 2015 is without merit and is dismissed with costs.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 21ST DAY OF JUNE 2017

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr. Oriero for the Plaintiff

 Mr. Odeny for the Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

21/6/2017

21/6/2017

S.M. Kibunja Judge

Oyugi court assistant

Mr Odeny for the Defendant

Mr Oriero for the Plaintiff

Order: Ruling dated and delivered in open court ion presence of Mr. Oriero and Mr. Odeny for the Plaintiff and Defendant respectively.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

21/6/2017