



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.50 OF 2016

SELYNA Z. MUSANDU.....PLAINTIFF

VERSUS

THE COMMISSIONER OF LAND1ST DEFENDANT

REGISTRAR OF TITLES.....2ND DEFENDANT

THE NATIONAL LAND COMMISSION.....3RD DEFENDANT

GEORGE ADADA NYAGOWA.....4TH DEFENDANT

RULING

1. **Selyna Z. Musandu**, the Plaintiff, vide notice of motion under **Section 1A, 1B of the Civil Procedure Act and Order 40 of Civil Procedure Rules** dated 4th March 2016, seeks for temporary injunction restraining **George Adada Nyangowa**, the 4th Defendant, by himself or agent from trespassing onto, alienating the land or in any way interfering with the suit property pending hearing and determination of the suit. The application is based on the four grounds on the notice of motion and is supported by the Plaintiff's affidavit sworn on the 24th February 2016.

2. The application is opposed by the 4th Defendant through his replying affidavit sworn on the 9th November 2016.

3. The notice of motion came up for hearing on the 13th March 2017 when Mr. Wasuna and Mr. Abande, learned counsel for the Plaintiff and 4th Defendant respectively, made their oral submissions.

4. The issues for the court's 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 interlocutory stage.

b) Who pays the costs.,

5. The court has after considering the grounds on the notice of motion, affidavit evidence and submissions by both counsel come to the following findings;

a) That the Plaintiff is one of the four administrators of the estate of the Late **Shadrack Jorim Wamari Musandu**, having been so appointed on 14th October 2011 in Nairobi H.C. Succession

Cause No.1093 of 2011.

b) That the late **Shadrack Jorim Wamari Musandu** became the registered leasehold proprietor of **L.R. 18998** measuring 1.2 hectares under Grant No.**1.R.64336** of 30th December 1994.

c) That the 4th defendant is the registered leasehold proprietor of **L.R.29996**, measuring 1.2 hectares under Grant **No.153894** of 17th January 2014.

d) That from the surveyor's report annexed to the Plaintiff's supporting affidavit, the Grant certificates (titles) in (b) and (c) above are over the same parcel of land on the ground.

e) That as the same parcel of land is claimed by both the Plaintiff and the 4th Defendant under two separate documents of ownership, it is necessary that the obtaining status quo in respect of the said land be maintained pending the hearing and determination of this suit.

6. That in view of the findings above, the notice of motion dated 4th March 2016 has merit and is allowed as prayed with costs in the cause.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 21ST DAY OF JUNE 2017

In presence of;

Plaintiff Absent

Defendants Absent

Counsel Mr. Achura for Wasuna for Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

21/6/2017

21/6/2017

S.M. Kibunja Judge

Court assistant Oyugi

Parties absent

Mr. Achura for Wasuna for Plaintiff/Applicant

Order: Ruling dated and delivered in presence of Mr. Achura for Wasuna for Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

21/6/2017