



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO.266 OF 2014**

**LILIAN ATIENO ODIMA.....PLAINTIFF**

**VERSUS**

**ERICK OMONDI OMBWAYO.....DEFENDANT**

**RULING**

1. **Erick Omondi Obwayo**, the Defendant, filed the notice of motion dated 19<sup>th</sup> July 2016 seeking for temporary injunction against **Lilian Atieno Odima**, the Plaintiff, from working, selling, disposing, constructing, building or erecting structures or in any way interfering with land parcel **Kisumu/Kasule/6255** pending the hearing and determination of this suit. The application is based on the two grounds on the notice of motion and supported by the affidavit sworn by **Erick Omondi Obwayo** on the 19<sup>th</sup> July 2016.
2. The application is opposed by the Plaintiff through the replying affidavit sworn by **Lilian Atieno Odima** on the 25<sup>th</sup> October 2016.
3. The interim orders of temporary injunction was issued on the 18<sup>th</sup> October 2016 and on the 16<sup>th</sup> January 2017, the court gave directions on filing of written submissions. The Defendant's counsel filed their submission on 23<sup>rd</sup> February 2017 while counsel for the Plaintiff filed theirs on 24<sup>th</sup> March 2017.
4. The following are the issues for the determination by the court;
  - a) Whether the Defendant 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 two grounds on the notice of motion, affidavit evidence, submissions by both counsel and concluded as follows;
  - a) That the Plaintiff commenced this suit against the Defendant seeking eviction and permanent injunction orders in respect of land parcel **Kisumu/Kasule/6255** which she got registered as proprietor on 24<sup>th</sup> July 2013 as per the copy of title deed and green card in her list of documents dated 11<sup>th</sup> September 2014.
  - b) That the Defendant opposed the claim through his defence dated 5<sup>th</sup> November 2014 and filed in

court on the 6<sup>th</sup> November 2014. The Defendant admits that the Plaintiff is the registered proprietor of the said land but avers that the land does not belong to her as it had been bought from her husband by his (Defendant's) father in 2006.

c) That though the defence filed contains at paragraphs 11 what may amount to as a counterclaim, the filing fees paid under receipt No.6250172 of 6<sup>th</sup> November 2017 do not contain fees for filing of the counterclaim and the same is not formally before the court.

d) That while the Defendant's claim is that his father had bought from the Plaintiff's husband parcel 112 which he depones is now referred to as **Kisumu/Kasule/6255**, the copy of the green card for the parcel **Kisumu/Kasule/6255** indicates that it was a subdivision from Plot No.5814. That the Defendant has therefore failed to show any nexus between parcel **112**, which he claims his father bought, and parcel **Kisumu/Kasule/6255** registered in the Plaintiff's name.

e) That the Plaintiff has denied any encroachment on the portion of land in occupation by the Defendant. The Plaintiff has further explained that the transactions that she has undertaken are over other parts of the land. That in view of the foregoing, it is only just that the status quo obtaining in respect of the portion of land occupied by the Defendant be maintained pending the hearing and determination of this suit.

6. That flowing from above the Defendant's notice of motion dated 19<sup>th</sup> July 2016 is allowed limited to the parties maintaining the status quo obtaining when this suit was filed in respect of the portion of the suit land occupied by the Defendant pending the hearing and determination of this suit. The costs will be in the cause.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 14<sup>TH</sup> DAY OF JUNE 2017**

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr. Baganda for the Plaintiff

Mr. Arkhio for Wwamu for the Defendant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**14/6/2017**

14/6/2017

S.M. Kibunja Judge

Parties absent

Mr. Arikho for Mwamu for the Applicant/Defendant

Mr. Baganda for the plaintiff

Court: Ruling dated and delivered in open court in presence of Mr. Baganda for the Plaintiff and Mr. Arikho for Mwamu for Defendant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**14/6/2017**