

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 1288 OF 2015

BENJAMIN OMANWA MOKUA.....PLAINTIFF/APPLICANT

VERSUS

BISHENDASS BERI.....1ST DEFENDANT/RESPONDENT

MAALIM DAKANE ALI.....2ND DEFENDANT/RESPONDENT

THE CHIEF LANDS

REGISTRAR NAIROBI.....3RD DEFENDANT/RESPONDENT

THE ATTORNEY GENERAL.....4TH DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Notice of Motion dated 14th December 2015 in which the Plaintiff/Applicant seeks for an order of temporary injunction to issue restraining the Defendants/Respondents from demolishing, constructing on or making any improvements on the parcel of land known as Land Reference Number 209/3630 registered under Grant No. I.R. 9417 (hereinafter referred to as the “suit property”) pending the hearing and determination of this suit. The Plaintiff/Applicant also prays for an order of inhibition to issue preventing any dealings with the suit property pending the hearing and determination of this suit and for an order consolidating this suit with ELC No. 692 of 2014 (OS).

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Plaintiff/Applicant, Benjamin Mokua Omanwa, sworn on 14th December 2015 in which he averred that he is in possession of the suit property which was initially registered in the name of the 1st Defendant as evidenced by a copy of a Certificate of Title which he annexed. He further averred that on 4th June 2014, he filed ELC No. 692 of 2014 (OS) seeking to be registered as the proprietor of the suit property by way of adverse possession. He further averred that in that suit, he also filed an application seeking for orders of temporary injunction which were granted. He further stated that he proceeded to register the order of temporary injunction against the title at the Lands Registry on 1st October 2015 when he was informed that the suit property did not belong to the 1st Defendant but instead belonged to the 2nd Defendant. He further stated that he conducted an official search on the suit property and came to learn that the 1st Defendant transferred the suit property to the 2nd Defendant on 19th July 1989. He averred that the said transfer was fraudulent as by the time he was filing ELC No. 692 of 2014 (OS), the suit property was registered in the name of the 1st Defendant. He further added that upon this discovery, he lodged a complaint with the Chief Lands Registrar and the Criminal Investigation Department but no assistance was forthcoming therefrom. He further averred that on 28th November 2015, the 2nd Defendant and Hebros Auctioneers came to the suit property and asked him to vacate immediately. He averred further that the 2nd Defendant descended on his house in the suit property in the company of the police, broke

into the house and carted away all his household items on 4th December 2015. He further averred that he later came to learn that break in orders had been obtained in Miscellaneous Application No. 978 of 2015. He also stated that the break-in order was addressed to his son Kennedy Nyasimi Omanwa who was a previous tenant for non-payment of rent amounting to Kshs. 1,500,000/-.

The Application is not contested. It was served upon the Defendants/Respondents by way of substituted service with the leave of court issued on 11th January 2016.

The issues arising for my determination in this matter are whether or not to issue to the Plaintiff/Applicant an order of temporary injunction and inhibition in respect of the suit property. The Plaintiff/Applicant has disclosed that he had filed an earlier suit being ELC No. 692 of 2014 (OS) seeking similar orders as sought in this matter in respect of the same parcel of land. He further disclosed that in the earlier suit, he did in fact obtain orders of temporary injunction restraining the Defendant in that suit who is also the 1st Defendant in this matter in respect of the suit property. The Plaintiff/Applicant has prayed that this court do consolidate the earlier suit with this suit.

It is to be noted that this court did in fact consolidate ELC No. 692 of 2014 (OS) with this file on 2nd February 2016. The lead file was ordered to be ELC No. 1288 of 2015. The prayer for consolidation of the two suits is therefore unnecessary. On the prayers for an order of temporary injunction, the position is that this issue was already addressed in the Ruling delivered by this court on 18th September 2015 in which the Plaintiff/Applicant was granted the orders sought. It is therefore unnecessary to issue a further order of temporary injunction as prayed by the Plaintiff/Applicant.

In light of the foregoing, this Application is considered superfluous and is dismissed with no order as to costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF JULY 2017.

MARY M. GITUMBI

JUDGE