



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO.277 OF 2016**

**VITALIS OBONYO OCHIENG.....PLAINTIFF**

**VERSUS**

**ANASTASIA ALOO OTIN .....1<sup>ST</sup> DEFENDANT**

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

**RULING**

1. **Vitalis Obonyo Ochieng**, the Plaintiff, filed the notice of motion dated 1<sup>st</sup> October 2016 seeking for temporary injunction restraining **Anastasia Aloo Otin**, the Defendant from “trespassing upon, wasting, alienating or otherwise interfering or dealing with the Plaintiff’s property “being **East Alego/Masumbi/1959** pending the hearing and determination of this suit. The Plaintiff also prays for an order for the County Surveyor to visit the suit land and determine its boundary with **East Alego/Masumbi/516** and establish the parcel that is occupied by the Defendant. The application is based on three grounds and supported by the affidavit of the Plaintiff sworn on the 21<sup>st</sup> October 2016.

2. The application is opposed by the defendant through her replying affidavit sworn on the 22<sup>nd</sup> November 2016 in which she among others depones that land parcel **East Alego/Masumbi/516** is registered in her late husband’s name, **Gordon Aloo Otin** and no grant of letters of administration has been issued.

3. The following are the issues for the court’s determination;

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.

4. The court has considered the grounds on the notice of motion, affidavit evidence, the pleadings filed and concluded as follows:

a) That the Plaintiff is the registered proprietor of land parcel **East Alego/Masumbi/1959** as confirmed by the copy of the title deed issued on 8<sup>th</sup> May 2012 annexed to the supporting affidavit.

b) That contrary to the Plaintiff’s averments and depositions that the Defendant is the registered proprietor of **East/Alego/Masumbi/516**, the Defendant has availed a copy of certificate of official search issued on 3<sup>rd</sup> November 2016 showing that the said land is registered in the name of

**Gordon Aloo Otin**, who according to the certificate of death No.0536122 dated 18<sup>th</sup> September 2015 died on the 16<sup>th</sup> June 2007.

c) That the said **Gordon Aloo Otin** is not a party in this suit and the Defendant has not been sued a legal representative of the said deceased's estate and is obviously not the registered proprietor of **East Alego/Masumbi/516**.

d) That in view of (c) above, the Plaintiff has failed to establish a prima facie case with probability of success for temporary injunction to issue at this stage.

5. That the notice of motion dated 21<sup>st</sup> October 2016 is without merit and is therefore dismissed with costs.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2017**

In presence of;

Plaintiff Present

Defendant Absent

Counsel None

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**27/9/2017**

**27/9/2017**

**S.M. Kibunja Judge**

**Plaintiff present**

**Defendant absent**

**Order ruling dated and delivered in open court in presence of the Plaintiff only.**

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**27/9/2017**