



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.161 of 2016

ROSELYN E OKUMU.....PLAINTIFF

VERSUS

DORINE ALUOCH ADHIAMBODEFENDANT

RULING

1. **Roselyne Okumu**, the plaintiff, seeks vide notice of motion dated 6th July 2016, for temporary injunction restraining **Dorine Aluoch Adhiambo**, the Defendant, from trespassing upon, building upon, interring the remains of anyone or in any other way dealing in or interfering with land parcel **Kisumu/Nyalunya/3655** pending the hearing and determination of this suit. The application is based on the six (6) grounds marked (1) to (6) on its face and is supported by the affidavits sworn by the Plaintiff on the 6th July 2016 and 8th November 2016.
2. The notice of motion is opposed by the Defendant through her replying affidavit sworn on the 22nd August 2016.
3. The counsel for the Plaintiff and the Defendant filed their written submissions dated 22nd May 2017 and 1st March 2017 respectively.
4. 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 upon which temporary order of injunction can issue at this stage.
 - b) Who pays the costs.
5. The court has carefully considered the grounds on the notice of motion, affidavit evidence by both parties, written submissions by counsel and come to the following findings;
 - a) That Land parcel **Kisumu/Nyalunya/3655**, the suit land, is registered in the name of Roselyne Okumu since 2nd September 2013 following a transfer by Robson Odhiambo Ndeng. That is confirmed by the copy of the green card that is annexed to the Plaintiff's list of documents.
 - b) That the said land is indicated to be a subdivision of plot **No.3496** in the said green card.
 - c) That the Plaintiff obtained the suit land through the agreement of sale of a portion of **Kisumu/Nyalunya/3496** as confirmed by the copies of the agreement dated 27th May 2011, and

acknowledgement of payments dated 28th June 2012 and 11th September 2012 between Robson Ondeng Odhiambo and herself.

d) That even though the Defendant depones that she was not aware of the transactions between Robson Ondeng Adhiambo, who is her late father in law, and the Plaintiff, it is apparent the Plaintiff title to the said suit land has never been challenged in accordance with **Article 40 of the Constitution and Section 26 of the Land Registration Act No.3 of 2012**. That according to the provisions of **Section 26 of the Land Registration Act**, the court is obligated to take the Plaintiff as the absolute and indefeasible owner of the said suit land until and unless her title to the said land is successfully challenged.

e) That the Plaintiff has therefore established a case for issuing of temporary order of injunction in terms of the interim order issued on the 6th Jul^y 2016 pending the hearing and determination of this suit.

6. That flowing from the foregoing the notice of motion dated 6th July 2016 is allowed with costs in terms of the interim order of 6th July 2016, which is hereby confirmed.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 18TH DAY OF OCTOBER 2017

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr. Yogo for the Plaintiff

M/S Adwar for the Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

18/10/2017

18/10/2017

S.M. Kibunja judge

Oyugi/Joane court Assistant

Parties absent

Mr. Yogo for Plaintiff/Applicant

M/S Adwar for Defendant/Respondent

Court: The ruling dated and delivered in open court in presence of

Mr. Yogo and M/S Adwar for the Plaintiff and Defendant respectively.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

18/10/2017