



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC CASE NO.117 OF 2016**

**JAMES ONANDA OGONDA.....PLAINTIFF**

**VERSUS**

**JACKTON ABAJA AWUONDA.....DEFENDANT**

**RULING**

1. This ruling relates to the notice of motion dated 30<sup>th</sup> May 2016 in which **James Onanda Ogonda**, the Plaintiff, seeks to have **Jackton Abaja Awuonda**, the Defendant, restrained from dealing with, alienating or mortgaging **South Gem/Dienya/620** pending the hearing and determination of this suit. The application is based on twelve grounds marked (a) to (L) and is supported by the affidavits of the Plaintiff sworn on the 30<sup>th</sup> May 2016 and 11<sup>th</sup> January 2017.

2. The application is opposed by **Jackton Abaja Awuonda**, the Defendant, through his replying affidavit sworn on the 1<sup>st</sup> July 2016.

3. The counsel for the plaintiff and defendant filed written submissions dated 9<sup>th</sup> May 2017 and 13<sup>th</sup> June 2017 respectively.

4. The following are the issues for the courts determinations;

a) Whether the Plaintiff has established a prima facie case with a probability of success for the temporary injunction to issue.

b) Who pays the costs.

5. The court has carefully considered the grounds on the notice of motion, affidavit evidence, written submissions and come to the following determinations;

a) That the documentary evidence availed, including the copy of the green card and certificate of official searches confirms that land parcel **South Gem/Dienya/620** was registered in the names of **Akech Ogala, Wilson Obare and Fanuel Ogonda** on first registration on 8<sup>th</sup> June 1977. The three held a third (1/3) share each and are reportedly all now deceased.

b) That the said land is currently registered in the name of **Jackton Abaja Awuonda**, the Defendant. He got so registered on 29<sup>th</sup> December 2004 pursuant to the confirmed grant in **Nairobi H.C. Succession Cause No.320 of 1999** dated 21<sup>st</sup> March 2003. That the Defendant's title is being challenged by the Plaintiff on the basis of fraud as particularized at paragraph 12 of

the plaint dated 24<sup>th</sup> May 2016.

c) That though the Defendant is the registered proprietor of the suit land and should be taken as the absolute and indefeasible owner of the said land, his title is under challenge in accordance with **Section 26 of the Registered Land Act No.3 of 2012** and **Article 40 (6) of the Constitution**. That it is only fair that the title's legal status and character of the suit land be safe guarded pending the hearing and determination of the suit. Within one year.

6. That in view of the foregoing the notice of motion dated (amended) on the 30<sup>th</sup> May 2016 is allowed in the following terms;

a) Prayer 3 is hereby granted, limited to restraining the Defendant by himself, his employees, servants and or agents from selling, mortgaging, charging, transferring, carrying out or continuing with any construction of a permanent nature or carrying out any other activity that could change or alter permanently the nature of land parcel **South Gem/Dienya/620** or any part thereof, pending the hearing and determination of this suit within one year.

b) The restraining order be in force for one year unless otherwise ordered.

c) Costs be in the cause

Order accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 15<sup>TH</sup> DAY OF NOVEMBER 2017

In presence of;

Plaintiff                      Absent

Defendant                    Absent

Counsel                      Mr. Gachuba for Ochuka for Plaintiff

Mr. Kowinoh for Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**15/11/2017**

15/11/2017

S.M. Kibunja Judge

Oyugi court assistant

Parties absent

Mr. Gachuba for Ochuka for Plaintiff/Applicant.

Mr. Kowinh for Defendant/Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

15/11/2017