



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.53 of 2017

HELLEN YONGE AMEKA.....PLAINTIFF

VERSUS

CONSOLATA LUBALO RAGWE.....DEFENDANT

RULING

1. Hellen Yonge Ameka, the Plaintiff, filed the notice of motion dated 30th January 2017 seeking for injunction and preservative orders restraining Consolata Lubalo Ragwe, the Defendant, from “interfering with, construction, cultivating or in any manner whatsoever dealing over L.R. No. **Kisumu/Pandpieri/3010** and 3011 till the hearing and determination of this case.” The Plaintiff also seeks to have the County Land Registrar, Kisumu to supply her with copies of documents listed under prayer 4. The application is based on the nine (9) grounds on the notice of motion and is supported by the Plaintiff’s affidavit sworn on the 30th January 2017.

2. The application is opposed by the defendant through her replying affidavit sworn on the 17TH February 2017.

3. The application came up for hearing on the 4th April 2017 when Mr. Mukabi and Yogo, learned counsel for the Plaintiff and Defendant respectively, agreed to file and exchange written submissions. The counsel for the Plaintiff filed their written submissions on the 10th May 2017 while that for the Defendant had been filed on the 28th February 2017.

4. The issue for determination is first, whether the Plaintiff has established a prima facie case with a probability of success for temporary injunction order to issue. Secondly, whether the Plaintiff has made a case for the orders sought against the County Land Registrar Kisumu, who is not a party in this proceeding to issue. Thirdly, which party pays the costs.

5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence by both parties, the submissions by counsel and come to the following findings;

a) That though the Plaintiff appear not to have had knowledge of the transactions leading to the registration in favour of the Defendant in respect of land parcel **Kisumu/Pandpieri/3011**, until after receiving the letter dated 28th January 2016, the Defendant has availed some documentary evidence upon which she acquired the land, which on the face of it looks valid.

b) That as the Defendant is the registered proprietor of land parcel **Kisumu Pandpieri/3011**, she is entitled to the rights and privileges of a registered proprietor until her title is successfully challenged in accordance with **Article 40(6) of the Constitution and Section 26 of Land**

Registration Act No.3 of 2012.

c) That should the Plaintiff succeed in her claim against the Defendant, her loss if any, is capable of being ascertained and an award in compensation made.

d) That the order sought against the County Land Registrar is incapable of being issued as prayed as the Land Registrar is not a party in this proceedings and hence cannot be condemned without being accorded a hearing.

e) That for reasons set above, the notice of motion dated 30th January 2017 is without merit and is hereby dismissed with costs in the cause.

Order accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 20TH DAY OF DECEMBER 2017

In presence of;

Plaintiff	Absent
Defendant	Absent
Counsel	Mr. Onyango for Yogo for Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

20/12/2017

20/12/2017

S.M. Kibunja Judge

Oyugi/Joane court assistant

Parties absent

Mr. Onyango for Yogo for Defendant

Court: The ruling dated and delivered in open court in presence of Mr. Onyango for Yogo for Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

20/12/2017