



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.350 OF 2016

SHEM OKORE OGOLA (Suing as the administrator of the

estate of

PIUS OYIEKO OGOLA (DECEASED)PLAIN
TIFF

VERSUS

RISPA ARUM AKUMU1ST
DEFENDANT

TOM MBOYA AYUGI.....2ND
DEFENDANT

JARED NYANGUTI3RD
DEFENDANT

MIFELY ENTERPRISES.....4TH
DEFENDANT

LAND REGISTRAR, NYANDO.....5TH
DEFENDANT

RULING

1. Shem Okore Agola, suing as the administrator of the estate of Pius Oyieko Agola, deceased, hereinafter referred to as the Plaintiff, seeks vide notice of motion dated 19th December 2016 to have Risper Arum Akumu, Tom Mboya Ayugi, Jared Nyaguti, Mifely Enterprises and Land Registrar, Nyando, the 1st to 5th Defendants respectively, restrained from "selling, transferring, negotiation for sale, abetting the sale or transferring or registering the transfer of land title No. Kisumu/West Koguta/3023" pending the hearing and determination of the suit. The application is based on the (5) grounds on its face summarized as follows;

- i) That the Defendants have already transacted on the said land, and are currently attempting to fence it and to dispose it to third parties.
ii) That a caution filed by the Plaintiff as a beneficial owner was removed secretly through collusion of the Defendants.
iii) That no grant of administration had been obtained before the land was transferred from the

deceased's name.

- iv) That no consent to transfer was obtained from the Land Control Board before the transfer.
- v) That the transactions involving the suit land have been illegal and the Plaintiff is apprehensive that adverse dealings on the land will take it out of his reach.

The application is also supported by the affidavit sworn by the Plaintiff on the 19th December 2016 more or less deponing to the matters set out in the five grounds.

2. The notice of motion is opposed by the 1st and 3rd Defendants through their replying affidavit sworn on the 10th May 2017 and 15th July 2017 respectively whose deposition is summarized herein below;

- i) That the suit land was initially registered in the name of Pius Oyieko Agola who was a brother in-law to the 1st Defendant and step brother to the Plaintiff.
- ii) That all family members consented to the 1st Defendant taking letters of administration in respect of Pius Oyieko Agola's estate after which the land was transmitted to her.
- iii) That the Plaintiff offered the family to purchase the land but his offer was declined. That thereafter the 2nd Defendant's offer was accepted by the family and all the procedures followed in the transactions.
- iv) That the 3rd Defendant purchased the land procedurally from the 2nd Defendant who had obtained title from the 1st Defendant.
- v) That the 3rd Defendant is the director to the 4th Defendant who is currently the registered proprietor of the land.

3. The application came up for hearing on the 2nd October 2017 when M/S Nyakalu and Mr. Mboya for the Plaintiff and Defendants respectively, made the oral submissions.

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 for temporary injunction to issue at this stage.
- b) Who pays the costs.

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

- a) That the Plaintiff has filed this suit on the strength of the Limited Grant of letter of Administration Ad litem issued in Nyando S.R.M. Succession cause No.103 of 2016 on the 14th December 2016.
- b) That the Plaintiff's main basis of challenging the transactions relating to the suit land is the irregularity and secrecy in the transfer of title from the name of Pius Oyieko Agola, the deceased, to the 1st Defendant and thereafter to the 2nd, 3rd, and 4th Defendants before a confirmed Grant of letters of administration and consent to transfer were obtained.
- c) That the 1st Defendant has annexed a copy of the letter of consent dated 2nd June 2015 allowing the transfer from her to the 2nd Defendant. That the 1st Defendant has also annexed the transfer documents, certificate of official searches among others. That whereas the documents annexed puts

to rest the question of letter of consent to transfer, the question on whether there was a confirmed grant at the time of transfer remains unanswered as none was availed to the court.

d) That the court takes notice that the Plaintiff has filed summons for revocation or annulment of grant dated 25th June 2014 in Kisumu H.C. Succession Cause No.103 of 2014, which appear to be pending in the succession court. That in case it is true that the 1st Defendant had not obtained a confirmed grant when she transferred the suit land to the 2nd Defendant, then she is likely to have contravened the provision of **Section 45, 55 (1) and 71 of the Law of Succession Act chapter 160 of the Laws of Kenya.**

e) That the apprehension expressed by the Plaintiff cannot be ignored noting the frequency of the transfers so far done on the title to the suit land and the court finds that he has made a case for temporary injunction.

6. That from the foregoing, the court finds merit on the Plaintiff's notice of motion dated 19th December 2016 which is hereby allowed in terms of prayer 3 with costs in the cause.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 13TH DAY OF DECEMBER 2017

In presence of;

Plaintiff	Absent
Defendants	Absent
Counsel	Mr. Odeny for Okore for Plaintiff
	Mr. Mboya for the Defendants

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

13/12/2017

13/12/2017

S.M. Kibunja Judge

Joan/Oyugi court assistants

Parties absent

Mr. Odeny for Okore for Plaintiff

Mr. Mboya for the Defendant.

Court: The ruling dated and delivered in open court in presence of Mr. Odeny for Okore for the Plaintiff and Mr. Mboya for the Defendants.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

13/12/2017