



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.269 OF 2016
CHRISTOPHER OTIENO OCHIEL.....PLAINTIFF
VERSUS
ANDREW ONYANGO.....DEFENDANT

RULING

1. **Christopher Otieno Ochiel**, the Plaintiff, prays for permanent injunction restraining **Andrew Onyango**, the Defendant, from trespassing into, entering into, selling, cultivating on, building structures onto or otherwise interfering or dealing with land parcel **Uholo/Magoya/771** pending the hearing and determination of this suit. The notice of motion list eight grounds on its face and is supported by the affidavits sworn by the Plaintiff on the 10th October 2016 and 17th August 2017.
2. The application is opposed by the Defendant through his replying affidavit sworn on the 3rd January 2017.
3. The application came up for hearing on the 28th September 2017. The Defendant though served with a hearing notice and affidavit of service filed did not attend.
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 orders to issue at this stage.
 - b) Who pays the costs.
5. The court has after considering the grounds on the notice of motion and affidavit evidence concluded as follows;
 - a) That the Plaintiff has established proprietorship of land parcel **Uholo/Magoya/771** through the certificates of official searches dated 26th September 2016 and 16th August 2017.
 - b) That the Defendant's claims to have beneficial interests on **Uholo/Magoya/450**, which his late father exchanged with his late uncle's namely Opiyo Asano and Achiel Ochieng, for parcel **Uholo/Magoya/451** which parcel he stated he wanted to develop, its proprietorship is unclear. That while the certificate of official search for parcel **Uholo/Magoya/451** dated 23rd January 2015, availed by the Defendant indicates the proprietors as Opiyo Osano and Ochiel Ochieng, the copy dated 16th August 2017 shows it was registered in the name of one Stephen Oluoch Opiyo on the 22nd December 2015.

c) That the surveyors report dated 126th August 2017 further indicates that parcels Uholo/Magoya/450 does not share a boundary with the Plaintiff's parcel **Uholo/Magoya/771** as in between is parcel Uholo/Magoya/451 and a road.

d) That in view of the foregoing, the Plaintiff has made a reasonable case for issuance of temporary injunction restraining the Defendant from interfering with land parcel **Uholo/Magoya/771** pending the hearing and determination of this suit.

6. That having found merit in the notice of motion dated 10th October 2016, the same is allowed in the following terms;

a) That the Defendant by himself and or agents is hereby restrained from trespassing into, cultivating and constructing on, alienating or otherwise dealing with land parcel **Uholo/Magoya/771** pending the hearing and determination of this suit.

b) The defendant to pay costs of the application.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 6TH DAY OF DECEMBER 2017

In presence of;

Plaintiff Present

Defendant Present

Counsel Mr. Ragot for Ogonda for Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

6/12/2017

6/12/2017

S.M. Kibunja Judge

Court assistant Oyugi

Mr. Ragot for Ogonda for Plaintiff

The Defendant is present in person.

The matter is for ruling.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

6/12/2017

Defendant in English: I am ready for the ruling.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

6/12/2017

Order: Ruling dated and delivered in open court in presence of
Mr. Ragot for Ogonda for the Plaintiff and the Defendant in person.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

6/12/2017