



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.24 OF 2016

**MARGARET A. OGOLLA (Suing as the administrator of the estate
of Andrew Charles ogolla).....PLAINTIFF**

VERSUS

JACOB ODERO OMENYO.....1ST DEFENDANT

ISAACK MORO OMENYO.....2ND DEFENDANT

LAND REGISTRAR – KISUMU.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. Margaret A. Ogola (suing as administrator of the estate of **Andrew Charles Ogola**), the Plaintiff, vide notice of motion dated 29th January 2016 seeks for the following two orders;
 - a) That **Jacob Odero Omenyo and Isaack Moro Omenyo**, the 1st and 2nd Defendants respectively, be restrained from trespassing onto, developing, alienating, disposing off or in any way interfering with the Plaintiffs quiet and peaceful use of land parcels Kisumu/Konya/4138 and 4139 pending the hearing and determination of this suit.
 - b) That pending the hearing and determination of this suit, the Land Registrar Kisumu, 3rd Defendant, be restrained from registering any transfer, charge or other interest relating to land parcels **Kisumu/Konya/4138 and 4139** or altering their registers.
2. The application is based on the six grounds on its face and is supported by the affidavit of the plaintiff sworn on the 29th January 2016.
3. Application is opposed by the 1st and 2nd Defendants through the replying affidavit sworn by the 1st Plaintiff on the 15th April 2016.
4. That notice of motion came up for hearing on the 23rd June 2016 when counsel for the 3rd and 4th Defendants indicated that they do not oppose the application. The counsel for the Plaintiff and that of the 1st and 2nd Defendants then agreed to file written submissions. The counsel for the Plaintiff filed their submission dated 19th September 2016 on the 20th September 2016, while counsel for 1st and 2nd

Defendants filed theirs dated 29th September 2017 on the same date.

5. The issues for determination by the court are as follows;

a) Whether the Plaintiff has established a prima facie case with probability of success for temporary restraining orders to issue at this stage.

b) Who pays the costs

6. The court has carefully considered the grounds, affidavit evidence, written submissions by counsel and come to the following findings:

a) That the Plaintiff, jointly with Michael Manase Ogola and Calvin Ayuo Ogola, were appointed administrators of the estate of Andrew Charles Obuya, who died on the 11th February 2011 in Nairobi H.C. Succession Cause No.1789 of 2011 vide grant issued on the 12th April 2012.

b) That **Kisumu/Konya/4138 and 4139** are subdivisions from **Kisumu/Konya/3579** and were first registered in the name of Omenyo Oloo. That the said Omenyo Oloo, deceased, became the first registered proprietor of **Kisumu/Konya/3579** on the 19th June 19962.

c) That Andrew Charles Oloo, the deceased, became, the registered proprietor of Kisumu/Konya/4138 and 4139, the suit land, on the 26th June 1995.

d) That though the 1st and 2nd Defendants deny transferring the two parcels to the said deceased, the copies of the green card availed by the Plaintiff shows that they had been registered with the lands just before the said Andrew Charles Ogola, deceased.

e) That the copies of the green card availed also indicated there has been subsequent registrations after that of the said **Andrew Charles Ogola** which the Plaintiff disowns, and which the 1st and 2nd Defendant appears not to confirm knowledge of. That in this fluid scenario, it's important that the legal status of the two parcels be preserved pending the hearing and determination of the suit.

7. That flowing from the foregoing the court find merit in the notice of motion dated 29th January 2016 and the same is granted in terms of prayer 4 and 5 with costs.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 6TH DAY OF DECEMBER 2017

In presence of;

Plaintiff Absent

Defendants 1st & 2nd present

Counsel None

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

6/12/2017

6/12/2017

S.M. Kibunja JUDGE

Oyugi court assistant

1st and 2nd Defendant present

1ST Defendant in Dholou

Our advocate has not come

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

6/12/2017

Court: Ruling dated and delivered in open court in presence of 1st and 2nd Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

6/12/2017