



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT KISUMU

ELC CASE NO.243 OF 2015

FREDRICK JUMA OSURU.....APPLICANT

VERSUS

THE WARD ADMINISTRATOR NYALENDA "B" WARD.....1ST RESPONDENT

COUNTY GOVERNMENT OF KISUMU.....2ND RESPONDENT

ODUME GENERAL CONSTRUCTION SUPPLIES LIMITED.....3RD RESPONDENT

RULING

1. **Fredrick Juma Osuru**, the Applicant, filed the notice of motion dated 23rd September 2015 seeking for temporary orders of injunction against the **Ward Administrator Nyalenda B, the County Government of Kisumu and Odume General Construction Supplies Limited**, hereinafter referred to as 1st to 3rd Respondents respectively, from construction of road on **Kisumu /Padpieri/1086** pending the hearing and determination of this suit. The applicant listed four grounds on the notice of motion which is supported by his affidavit sworn on 23rd September 2015 and further affidavit sworn on 21st October 2015.
2. The application is opposed by the 1st and 2nd Respondents through the replying affidavit of **Valentine Oiro**, the City Surveyor with County Government of Kisumu, sworn on 7th October 2015.
3. The 3rd Respondent also opposed the application through the replying affidavit of **Michael Odumbe Akeyo** sworn on 8th October 2015.
4. The counsel for the parties appeared in court on 22nd October 2015 and agreed to file written submissions. The Applicant's counsel filed their submissions dated 18th November 2015 while the 3rd Defendant's counsel filed their submissions dated 24th November 2025. There are no submissions filed by counsel for the 1st and 2nd Respondents.
5. The main issue for determination is whether the Applicant has established a prima facie with a probability of success for temporary injunctive orders to issue at this interlocutory stage.
6. The court has considered the grounds on the notice of motion, the affidavit evidence by all parties, the submissions filed and come to the following determination;
 - a) That the Applicant is the registered proprietor of land parcel **Kisumu/Pandpieri/1086** measuring 0.02 hectares as confirmed by the copy of the title deed and certificate of official search.

The documents show that he got so registered on the 2nd January 1987.

b) That even though the undated report by **Valentine Oiro**, attached to the replying affidavit he swore on behalf of the 1st and 2nd Respondents, indicates that the Applicant's land had not encroached onto the road under construction, the Applicant's position is that some markings have been placed inside his land making him apprehensive that Respondents would encroach onto it. The Respondents have disputed having put any such marks onto the plot. The court has taken note of the annexures to the Applicant's supporting affidavit, especially the Land Registrar's report dated 21st January 1999 and undated report by **David Mogaka Land Surveyor**, that confirms that the Applicant had previously complained that some people had started using a portion of his land after the road had been blocked. It would therefore have been important for the 1st and 2nd Respondents to have involved the Applicant and the Land Registrar in determining the boundary between the land of the Applicant and the road, but they did not do so.

c) That the importance of the road project being undertaken by the Respondents cannot be gainsaid. It has great public interest and the 3rd Respondent is expected to complete it within a specified time. It would therefore serve great the public interest if the project is allowed to continue without undue delay while ensuring that the interest of the Applicant are protected. The court is of the view that the damages that the Applicant is likely to suffer, if any, are capable of being assessed and an order of compensation made. [See **Kisumu E.L.C. CASE NO.301 OF 2014 JUDE THADEUS RAGOT -V- CHINA OVERSEAS ENGINEERING COMPANY LIMITED & ANOTHER**] where this court made a similar finding.

7. That flowing from the foregoing the court finds that the Applicant has failed to establish a prima facie case with a probability of success. He has also failed to demonstrate that he would suffer irreparable loss if the orders sought are not granted. The balance of convenience tilts in the favour of allowing the road project to continue. {See **Giella -V- Cassman Brown Co. Ltd** (1973) E.A. 358.} The court therefore issues the following orders;

a) That the application dated 23rd September 2015 is dismissed with costs.

b) That the court on its own volition directs that the **County Land Registrar Kisumu** do confirm of the boundary position between land parcel **Kisumu/Pandpieri/1086** and the public road and file a report in court within sixty (60) days indicating among others, the extent of encroachment, if any.

c) The Applicant to pay the requisite fee in relation to the exercise in (b) above.

d) That so as to allow the completion of the exercise in (b) above, the parties are directed to maintain the status quo as ordered on 8th October 2015 for sixty (60) days from today, after which the status quo order will automatically lapse unless otherwise directed.

It is so ordered.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 27 TH DAY OF APRIL 2016

In presence of;

Applicant Absent

Respondent s Absent

Counsel Mr Onyango for Applicant

Mr Rodi for 1st and 2nd Respondent Mr Otieno for Sala for 3rd Respondent

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

27/4/2016

27/4/2016

S.M. Kibunja J

Oyugi court assistant

Mr Onyango for Plaintiff/Applicant

Mr Otieno for Sala for 3rd Defendant and Mr Rodi for 2nd and 3rd Defendant present

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

27/4/2016

Court: Ruling Delivered in open court in presence of Mr Onyango for Applicant, Mr Rodi for 1st and 2nd Respondent and Mr Otieno for Sala for 3rd Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

27/4/2016