



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT KISUMU
ELC CASE NO.206 OF 2014

JOHN OBAREAPPLICANT

VERSUS

MOSES ADAGALA..... RESPONDENT

RULING

1. Through the notice of motion dated 15th July 2014, **John Obare**, the Applicant seeks to restrain **Moses Adagala**, the Respondent from " **occupying, erecting structures, developing, trespassing and or dealing in any other manner with plot No.399 Muhoroni pending the hearing and determination of this suit.**" The Application is based on five grounds on its face and is supported by the affidavit of the Applicant sworn on 15th July 2014. The Applicant annexed a copy of a letter, dated 30th September 2008 offering him **plot No.399 D/Shauri Yako A** and receipt fro payment of Sh.7,000/= dated 25th April 2008.
2. The application is opposed by Respondent through his replying affidavit sworn on 4th November 2014. The Respondent annexed copies of sale agreement between Rosemary Atieno Onyango and himself under which he bought plot **No.399A/Shauri Yako**. He also annexed copies of three receipts in the names of **Jared Onyango Sidera** for payments of certain monies to Muhoroni Town Council dated 4th January 2011, 25th May 2009 and 9th July 2007. He also annexed a copy of a certificate of confirmation issued in **Nairobi H.C Succession Cause NO.1895 of 2006** indicating that Rosemary Atieno Onyango and another had been appointed administrators of the estate of Jared Onyango Sidera. It also contain details of how the estate was to be distributed.
1. The Applicant filed a supplementary affidavit sworn on 16th March 2015 responding to the replying affidavit. He depones that the County Government of Kisumu had stopped all transactions of land in the County by the time the Respondent purported to have bought his plot; that plot described by the respondent as No.399 A is not in existence and that it is not among the properties distributed under the certificate of confirmation annexed to the Respondent's replying affidavit.
4. That though counsel for the parties had on 4th June 2025 agreed to have the notice of motion dated 15th July 2014 and notice by the Defendant's counsel to raise a preliminary objection dated 30th October 2014 to be heard together, the latter was marked abandoned on application on 9th February 2016. The counsel had also agreed on 4th June 2015 to file written submissions. The Defendant's counsel's submissions dated 10th June 2015 were filed on 11th June 2015 while the Plaintiff's Counsel filed theirs dated 16th November 2015 on the 17th November 2015.
5. That the court has considered the grounds on the Notice of Motion, the affidavit evidence and the rival submissions and come to the following findings;

a) That from the documentary evidence availed by the Applicant, the Town Council of Muhoroni allotted him plot No.399 D/ Shauri Yako vide their letter dated 30th September 2008 which refer to the Town Planning Minute **No.MTC/TRWHECM/5/2006** of 11th October 2006 and Full Council Minute **No. MTC/FCM/52006**. The plan annexed by the Applicant is blurred and the court is unable to confirm from it the ground portion of the plot described as **Plot 399 D/Shauri Yako**.

b) The Respondent has availed documents that shows that one **Jared Onyango**

Sidera used to pay monies to the Town Council of Muhoroni for **plot No.399A** and that he had been summoned by the Town council of Muhoroni vide their letter dated 6th June 2012 to appear before the town Planning committee on 12th June 2012. He has also annexed a copy of a certificate of confirmation to show that Rosemary Atieno Onyango was one of the administrators of the estate of Jared Onyango Sidera whose estate was distributed on 31st March 2009. The court however notes that the properties listed for distribution did not include **plot No.399A/Shauri Yako** that Respondent subsequently bought from Rosemary Atieno Onyango under the sale agreement dated 19th April 2014. The Respondent has not availed any letter of allotment to show that **plot 399 A** had been allotted to the said Jared Onyango Sidera. He has also not availed any sketch plan (map) to show the ground position of the said plot.

c) That there is no documentary evidence availed by the parties to confirm whether **plot No.399A and 399D** refers to the same plot and or their relationship to plot No.399, if any. The County Government and the National Land Commission have not been enjoined in these proceedings yet they are the state organs in whose custody documents necessary to confirm the existence or otherwise of the plot in dispute and the legal ownership vests.

d) That even though the court is not expected at this interlocutory stage to make conclusive findings of facts and the law, the evidence so far availed shows there is need to maintain the status quo obtaining at the stage of filing these proceedings to enable the status of the suit property, be it **plot 399A, 399D or 399** remains unchanged as the parties litigate on the issues before the court. The application therefore has merit.

6. That having found as above the notice of motion dated 15h July 2014 is granted as follows:

a) That a temporary injunction is hereby issued restraining the Respondent either by himself, agents, savants, representatives or anyone acting on his behalf and anyone of the, whatsoever from erecting or developing structures on plot No.399 – Muhoroni pending the hearing and determination of this suit.

b) The costs of this application will be in the cause.

It is so ordered.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 13TH DAY OF APRIL 2016

In presence of;

Applicant Absent

Respondent Absent

Counsel Mr Oriel for Onyari for Applicant

Mr Dome for Odeny for Respondent

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

13/4/2016

13/04/2016

S.M. Kibunja

Oyugi court assistant

Mr Dome for Odeny for Respondent

Mr Oriel for Onyari for Applicant.

Court: Ruling delivered in open court in presence of Mr Oriel for Onyari for Applicant and Mr Dome for Odeny for Respondent.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

13/4/2016