



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT KISUMU

ELC CASE NO.147 OF 2014

GEORGE OMBIRO OBUNGA.....PLAINTIFF/APPLICANT

VERSUS

CHARLES OGUTU OCHIRI.....DEFENDANT/RESPONDENT

RULING

1. The Applicant, **George Ombiro Obunga**, filed the notice of motion dated 2nd June 2014 seeking for the Respondent, **Charles Ogutuy Ochiri**, to be restrained from carrying out any activities on land parcel **East Gem/Ramula/168** pending the hearing and determination of this suit filed through his plaint dated 2nd June 2014 and amended on 15th April 2016 in which he seeks revocation of the Respondent's/Defendant's title to the said land and costs. The application is supported by his affidavit sworn on 2nd June 2014 in which he, among others, depones that the Respondent left him out in the **Siaya SPMCC Citation Cause No.24 of 2012**.

2. The application is opposed by the Respondent through the replying affidavit sworn on 16th September 2014, in which he deponed that he acquired ownership of the suit land through **Kisumu HC. Succession Cause No.1290 of 2013**. The Respondent annexed a copy of the certificate of confirmation of grant dated 26th March 2014 showing that land parcel **East Gem/Ramula/168** was to be inherited transmitted to **Charles Ogutu Ochiri**. He also annexed copy of the title deed for the suit land showing that he got registered with the suit land on 9th May 2014.

3. The application came up for hearing on 18th April 2016 when the Applicant in person, and Mr. Ogonda for the Respondent gave their submissions.

4. The issues for determination are as follows:

a) Whether the Applicant has established a prima facie case on the facts presented with a probability of success.

b) Which party pays the costs.

5. The court has carefully considered the notice of motion, the affidavit evidence by both parties, the submissions by the Applicant and counsel for the Respondent and come to the following conclusions:

a. That indeed land parcel **East Gem/Ramula/168**, the suit land, was previously registered in the names of **Norah Ongata Okoyo**, who died on 17th August 1978.

b) That the said land was registered in the names of the Respondent, **Charles Ogutu Ochiri**, on 9th May 2014 following the confirmation of the Grant in respect of the estate of **Dorah**

Ongeta Okoyo alias Dorah Ongata in Kisumu HC Succession Cause No.1290 of 2013 on the 26th March 2014.

c) That the nature of the Applicant/Plaintiff's suit through the plaint dated 2nd June 2014 and amended on 15th April 2016 is essentially an attempt to challenge or vary the decision of the **Succession Court** that transmitted the suit land to the Respondent/Defendant without following the legally recognized process of filing objection and revocation proceedings in the Succession Cause whose details has been disclosed.

d. That the Applicant's suit, and the notice of motion dated 2nd June 2014 are non starters and an abuse of the process of the court. That even though what is before this court is only the notice of motion dated 2nd June 2014, the court has jurisdiction under **Section 1A, 1B and 3A of the Civil Procedure Act Chapter 21** of Laws of Kenya and **Order 2 Rule 15 (1) of the Civil Procedure Rules** to struck out a suit that does not disclose a reasonable cause of action and which is otherwise an abuse of the process of the court in appropriate cases. This is one of such appropriate cases. The court's decision or action will allow the Applicant/Plaintiff to move the Succession Court as appropriate, instead of following up on a suit that is obviously not going anywhere.

6. That flowing from the foregoing, the court finds that the notice of motion dated 2nd June 2014 is without merit and issues the following orders:

a) That the notice of motion dated 2nd June 2014 is hereby dismissed with costs.

b) The court on its own motion, finds that the plaint dated 2nd June 2014 and amended on 15th April 2016 discloses no reasonable cause of action and is otherwise an abuse of the process of the courts. The suit is hereby struck out to allow the Applicant/Plaintiff consider to pursue his claim through the **Kisumu HC Cause No.1290 of 2013**.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 18TH DAY OF MAY 2016

In presence of;

Plaintiff Applicant Present

Defendant/Respondent Absent

Counsel Mr Ogonda for Defendant/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

18/5/2016

18/5/2016

S.M. Kibunja J

Oyugi court assistant

Plaintiff present

Mr Ogonda for Respondent/Defendant

Plaintiff present in person.

Court: Ruling delivered in open court presence of Plaintiff /Applicant and Mr Ogonda for the Defendant/Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

18/5/2016