



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT KISUMU**  
**LAND CASE NO.124 OF 2015**

**HELLEN HILDA OGALO OYOO.....APPLICANT**

**VERSUS**

**DIANA OLIECH.....1ST RESPONDENT**

**VICTOR AKECH.....2ND RESPONDENT**

**RULING**

1. **Hellen Hilda Ogalo Oyoo**, the Applicant, filed the notice of motion dated 20th May 2015 seeking for temporary injunction orders against **Diana Oliech** and **Victor Aketch**, the Respondents, over land parcel **Kisumu/Kapuonja/2329** pending the hearing and determination of the suit. The application is based on the seven grounds on the notice of motion. It is also supported by the affidavit of **Hellen Hilda Ogalo Oyoo** sworn on 20th May 2015 and the further affidavit sworn on 17th August 2015.
2. The application is opposed by the Respondents through the replying affidavit sworn on 3rd June 2015.
3. The counsel for the parties appeared in court on the 5th November 2015 and agreed to have the notice of motion canvassed through written submissions. The Applicant's counsel filed their written submissions dated 27th January 2016 while Respondent's counsel filed theirs dated 16th February 2016.
4. The main issues for determination are as follows:
  - a) Whether the Applicant has established a prima facie case for issuance of temporary injunction orders at this stage.
  - b) Which party pays the costs.
5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence by both parties, the rival written submissions and concluded as follows:
  - a) That though the Applicant is the registered proprietor of land parcel **Kisumu/Kapuonja/2329** since 1st November 2012, and therefore entitled to the rights and privileges of a registered proprietor under **Section 24 and 25 of the Land Registration Act No.3 of 2012**, she got so registered while aware that the Defendants were in occupation of part of the land. It is only fair that the Defendants be allowed to continue using the portion that they have been in occupation of pending the hearing and determination of the suit that seeks to permanently injunct them from that land.

b) That the Respondents have in their replying affidavit and filed statement of defence challenged the Applicant's title to the land in dispute claiming among others that the same was obtained through fraud. They are entitled to do so pursuant to **Section 26 (2) of the Land Registration Act** and it is only reasonable that the status quo, in respect of the use of the suit land, be maintained pending the hearing and determination of this suit on merit.

c) That having considered the various decided cases counsel referred the court to in their written submissions, the court find that the Applicant has failed to establish a prima facie case with a probability of success. She has also not shown that an award of damages would not suffice if she was to be successful in the end. The balance of convenience also works against issuing the injunction orders at this interlocutory stage.

6. That in view of the foregoing, the notice of motion dated 20th May 2015 is without merit and is dismissed with costs.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 18TH DAY OF MAY 2016**

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr Odongo for Stausi for Plaintiff/Applicant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**18/5/2016**

18/5/2016

S.M. Kibunja J

Oyugi court assistant

Parties absent

Mr Odongo for Stausi for plaintiff/applicant

Court: ruling delivered in open court in presence of Mr Odongo for Stausi for Plaintiff/Applicant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**18/5/2016**