



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.33 OF 2016

PETER ORIENDO YOGA.....1ST APPLICANT

GEORGE OCHIENG OBONGO.....2ND APPLICANT

VERSUS

HABAKUK OTIENO NANDIRESPONDENT

RULING

1. **Peter Oriendo Yoga** and **George Ochieng Obongo**, hereinafter referred to as the 1st and 2nd Applicants, filed the notice of motion dated 11th February 2016 seeking for injunctive orders against **Habakuk Otiemo Nandi**, the Respondent, restraining him from evicting the dependants of **John Obongo Yoga** from ,and or constructing on **Kisumu/Koguta East/834**. The Applicants listed fourteen grounds on the notice of motion which is also supported by the affidavits sworn by **Peter Oriendo Yoga** on 11th February 2016 and 8th April 2016.
2. The application is opposed by the Respondent through the replying affidavit sworn on 15th March 2016.
3. The counsel for the parties agreed to file written submissions on the application. The applicant's counsel's submission dated 16th May 2016 was filed on the 18th May 2016 while that of the Respondent's counsel dated 17th May 2016 was filed on the same date.
4. The following are the main issues for the courts determination;
 - a) Whether the Applicants has established a prima facie case with a possibility of success.
 - b) Whether the injunctive order sought should be granted.
 - c) Who pays the costs.
5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence and counsel's rival submissions and concluded as follows;
 - a) That land parcel **Kisumu/Koguta East/834** was according to the documents availed by the Applicants first registered in names of **Kichawa Yoga** alias **John Obongo Yonga** on 14th May 1974 as shown on the copy of the register marked "**POY 2a**." In rebuttal the Respondent annexed a copy of a register for **Kisumu/South Nyakach/Koguta East/1676** marked "**HON 1**" which shows that it was registered on 7th October 1976 and is a subdivision of plot No.**834**. The register shows that the land was first registered in the names of **Nyaole Odumbe** on 7th October 1976 and the same day transferred to **Mathayo Nandi Aloo** following a sale transaction. It was then transmitted to the Respondent on the 18th August 1986. That the Applicants disputed the authenticity of the Respondent's title by

availing through the further affidavit a copy of a register for parcel **834** issued on 24th May 2005, and certificate of official search dated 1st March 2004 showing that the register was closed on 25th November 1975 upon being subdivided into parcels **1671 and 1672**.

b) That it is not clear from the copies of the registers provided by the Applicants whether their case is that parcel **834** is still intact or has been closed after being subdivided into parcels **1671 and 1672**.

c) That the parcel of land No.**834** that the Applicants have sued over is stated to be **1.8 hectares** in size while the land the Respondent has claimed to be a subdivision of parcel 834 and registered as parcel **1676 is 0.38 hectares**.

d) That while the case for the Applicants is that they are residing on the land they have sued over, the Respondent has indicated that he uses the land for cultivation and there are no houses on it.

e) That from the material facts presented by the Applicants and the Respondent, it is not possible for the court to establish with certainty whether parcel 834 was subdivided into parcel **1671 and 1672** or parcel **1675 and 1676**. It is also not possible to ascertain whether the register for parcel 834 has been closed or not.

f) That the letter dated 26th June 2006 marked "**POY 2C**" attached to the further affidavit of **Peter Otiendo Yogo** goes to show that the dispute over the land between the Applicants family and the Respondent has been ongoing for years. That none of the parties has however disclosed to the court what the decision of the Land Register was on the matter.

g) That in view of the fact that the Applicants appear to be the ones in possession of what they call **Kisumu/Koguta East/834** from which the Respondent claim land parcel **Kisumu/South Nyakach/Koguta East/1676** was subdivided from, it is only fair to allow them to continue using that land for the next one year as the case is heard and determined.

6. That for reasons set out above, the court orders as follows;

a. That the Respondent is through himself or agents hereby restrained from interfering with the use by the Applicants, and evicting the dependents of **John Obongo Yonga** (deceased) from the land in their possession, described as **Kisumu/Koguta East /834** for the next one year to enable this case be heard and determined.

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

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 29TH DAY OF JUNE 2016

IN PRESENCE OF;

PLAINTIFFS/APPLICANTS Present

DEFENDANT/RESPONDENT Present

COUNSEL Mr Baganda for Opando for Applicant

Mr Oriero for the Defendants

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

29/6/2016

29/6/2016

S.M. Kibunja J.

Oyugi court assistant

Parties present

Mr Oriero for defendants Present

Court: Ruling delivered in open court in presence of parties, Mr Oriero for Defendant/Respondent and Mr Baganda for Opando for Plaintiff/Applicant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

29/6/2016