



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 331 OF 2015

MESHACK ODHIAMBO MBASA1ST APPLICANT

PERCY OWINO OCHIENG2ND APPLICANT

CHARLES ROSA MBASA3RD APPLICANT

VERSUS

PATRICK MBASA RESPONDENT

RULING

1. The Applicants, **Meshack Odhiambo Mbas**a, **Percy Owino Ochieng** and **Charles Rosa Mbas**a, filed the notice of motion dated 30th November 2015 **against Patrick Mbas**a, the Respondent, seeking for injunction orders over land parcel East Gem/Ramula/874 pending the hearing and determination of this suit. The Applicants have set out 11 grounds on the face of notice of motion which is supported by the affidavit of **Meshack Odhiambo Mbas**a, sworn on the 30th November 2015 and a further affidavit sworn on 15th February 2016.

2. The application is opposed by the Respondent through his replying affidavit sworn on 19th January 2016.

3. The court issued interim orders in terms of prayer 2 on the 2nd December 2015 pending the hearing and determination of the application. The counsel for the parties then appeared before the court on 21st April 2016 and agreed to file written submissions. The Applicants' counsel filed their submissions dated 4th May 2016 on the 5th May 2016, while the Respondent's counsel filed theirs dated 25th May 2015 on the same date.

4. The issues for determination are first, whether the Applicants have established a prima facie case for issuance of temporary injunction orders at this interlocutory stage. Secondly which party pays the costs.

5. The court has considered the grounds on the notice of motion, the affidavit evidence by both parties, the submission by both counsel and come to the following findings;

a) That the 1st Applicant and the Respondent are sons to the 3rd Applicant while the 2nd Applicant is their nephew.

b) That the land parcel **East Gem/Ramula/874** was registered in the names of 1st and 2nd Applicants on 25th June 2015. That by the time this application was filed the two Applicants were

and still are the absolute proprietors of the said land until and unless their title is successfully challenged as provided for under **Section 26** of the Land Registration Act No.3 of 2012.

c) That the Applicants have established, and the Respondent has conceded, that the Respondent is constructing on the said land. That the Respondent claim over the land is based on a customary right to occupy that land as the last born of his mother, which has however been disputed by the Applicants. That the 1st and 2nd Applicants have deponed that they were gifted the land in dispute by the 3rd Applicant, and being the registered proprietors, they are entitled to the interlocutory orders.

d) That from the foregoing, it is only fair and just that the status quo be maintained pending the hearing and determination of this suit.

6. That flowing from the foregoing court, finds that the notice of motion dated 30th November 2015 has merit and is allowed in terms of prayer 3 pending hearing and determination of this suit with costs. It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 28TH DAY OF JULY 2016

In presence of;

Applicants Absent

Respondent Present

Counsel Mr Sala or Plaintiff/Applicant

Mr Onyango for Kowino for Defendant/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/7/2016

28/7/2016

S.M. Kibunja J

Oyugi court assistant

Defendant present

Mr Onyango for Kowino for Defendant

Mr Sala for the Plaintiffs

Court: Ruling delivered in open court in presence of the Defendant, Mr Sala for Plaintiff/Applicants and

Mr Onyango for Defendant/Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/7/2016