



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.336 OF 2013

JAMES OMBOK RAPELA (SUING ON BEHALF OF S O O (MINOR)...APPLICANT

VERSUS

WILLINGSTONE OTIENO AKUNGA.....RESPONDENT

RULING

[1] **James Ombok Rapela** (suing on behalf of **S O O** (minor), the Applicant, filed the notice of motion dated 28th November 2013 praying for temporary and mandatory injunction against **Willingstone Otieno Akunga**, the Respondent, restraining him from alienating, constructing, and interfering with the Applicant's land parcel **Siaya/Bar Olengo/879** pending the hearing and determination of this suit. The application is based on eight grounds on the notice of motion and supported by the affidavit of **James Ombok Rapela** sworn on the 28th November 2013.

[2] **The application is opposed by the Respondent through his replying affidavit sworn on 21st February 2014.**

[3] The counsel for the applicant filed their written submission dated 19th March 2014 while that for the Respondent filed theirs dated 9th April 2014.

[4] The issues for determination are as follows;

(a) Whether the Applicant has established a case for issuance of temporary and mandatory injunction at this interlocutory stage.

(b) Who pays the costs?

[5] The court has carefully considered the grounds on the notice of motion, the affidavit evidence presented by both parties, the written submissions filed by both counsel and come to the following conclusions;

(a) That the Applicant and two others got registered as proprietors of the land parcel **Siaya/Bar Olengo/879** on the 20th September 2013 and had the title issued on 24th September 2013 as trustees for **S O O**, a minor son to **Joel Ogutu Rapela** who died on 8th February 2013. {see the certificate of death No.[particulars withheld] , the grant issued on 17th December 2012 and certificate of confirmation of 10th July 2013 in Siaya S.R.M. Succession cause No.95 of 2012 and the copy of the title deed all attached to the supporting affidavit).

(b) That from the certificate of official search of land parcel **Siaya/Bar Olengo/879**, also attached to the supporting affidavit, the land was first registered in the names of the late Joel Ogutu **Rapela** on 9th March 2009, which is about six years after his death on 8th February 2003. That the Applicant has not tendered any explanation on how the said deceased was registered with the suit after death. That the court hopes appropriate explanation will be tendered during the main hearing as the Respondent has put forward a claim of entitlement to the suit land.

(c) That the Applicant has not specified the time when the Respondent came onto the suit land and put structures thereon. That the Respondent has deponed that he has been in occupation of the said land for about 20 years. That should the Respondent claim of the 20 years occupation be confirmed, then it would mean he was in occupation for years before the late **Jeol Ogutu Rapela** got registered as proprietor of the suit land on 9th March 2009. That it would also mean the Respondent was in occupation of the suit land for years before the Applicant and his two colleagues got registered with the suit land as trustees for the named minor.

(d) That further to the finding above it would be unfair and unjust to require the respondent to vacate from the suit land which he has been in occupation of for years before the applicant and the late **Joel Ogutu Rapela**, whose estate he is the administrator, got registered as proprietors.

(e) That there is however need to ensure the legal status of the suit land is maintained pending the hearing and determination of this suit. That it is also important that the parties herein do maintain peace and harmony by respecting the use of the land that was in place by the time this suit was filed and further ensuring that no new developments of structural nature are carried out on the suit land while this suit is pending in court.

[6] That the court therefore issues the following orders in respect of the notice of motion dated 28th November 2013.

(a) That the notice of motion dated 28th November 2013 has no merit and is dismissed with each party meeting their own costs.

(b) That so as to ensure the legal status of the suit land is maintained and that the parties herein maintain peace and harmony, the court on its own motion issues the following order;

(i) That an inhibition order in terms of **Section 68 of Land Registration Act No.3 of 2012** is hereby issued in respect of land parcel **Siaya/Bar Olengo/879** pending determination of this suit.

(ii) That the status quo on the use of land parcel **Siaya/Bar Olengo/879** obtaining at the time this suit was filed do continue save that the parties should not carry out any new structural developments on the suit land pending the determination of this suit.

(c) That the parties do comply with **Order 11 of the Civil Procedure Rules** within the next 30 days.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 21ST DAY OF SEPTEMBER 2016.

In presence of;

Applicant **Absent**

Respondent **Absent**

Counsel **Absent**

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

21/9/2016

21/9/2016

S.M. Kibunja J

Oyugi court assistant

Parties absent

Counsel absent

Court: Ruling delivered and dated in open court in absence of all parties and counsel. The Deputy Registrar to communicate the delivery.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

21/9/2016