



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
LAND CASE NO.208 OF 2014

MARY WAWIYE1ST APPLICANT

JACK ODHIAMBO.....2ND APPLICANT

VERSUS

COUNTY GOVERNMENT OF SIAYA.....1ST RESPONDENT

MARTIN N. OKOLA2ND RESPONDENT

BENEDICT ODENGO ODHIAMBO.....3RD RESPONDENT

RULING

1. Mary **Wawiye** and **Jack Odhiambo Goga**, the applicants, filed the notice of motion dated 24th July 2014, against **The County Government of Siaya, Martin N. Okola** and **Benedict Odengo Odhiambo**, the 1st to 3rd Respondents respectively, seeking to have the Respondents restrained from selling, developing or otherwise interfering with the allotment of **UNS RES. PLOT NO. 5** to **John Yaliuma Wawiye**. The application is based on eight grounds on its face and supported by the affidavit of Jack Odhiambo Goga sworn on the 14th July 2014.

2. The application is opposed by the 3rd respondent through the replying affidavit sworn by **Benedict Odengo Odhiambo** on 15th September 2014. The other two Respondents did not file replying papers.

3. The matter was mentioned on 16th March 2016 in the presence of 2nd Applicant and counsel for the 2nd and 3rd Respondents and directions for filing written submissions were given. The applicants filed their undated and unsigned submission on 11th May 2016 while the counsel for the 3rd Respondent filed theirs dated 24th June 2016 on the same date. The counsel for the 2nd respondent adopted the submissions of the 3rd Respondent.

4. The issue for determination is whether the Applicants have established a case for issuance of temporary injunction at this interlocutory stage. Secondly which party pays the costs?

5. The court has after considering the grounds on the notice of motion, the affidavit evidence and the rival written submissions filed come to the following findings;

a) That from the copies of documents availed by the Applicants the **UNS RES PLOT NO.5 – Siaya Township**, hereinafter referred to as the suit land, was allocated to **John Yaliuma Wawiye**

vide letter of allotment dated 25th September 1991. That the said **John Yaliuma Wawiye** passed on the 18th May 1993 as shown in the copy of certificate of death number 49015. **That the 1st Applicant, Mary Wawiye** was appointed the administratrix of the estate of **John Yaliuma Wawiye**, in Nairobi H.C. Succession Cause NO.1607 of 1993 and the grant confirmed on the 7th June 1996 as shown in the copy of the certificate of confirmation. That among the properties of the estate in the schedule of the certificate of confirmation is **Siaya unsurveyed Plot No.5** which the courts takes to refer to the suit land.

b) That the Applicants have availed several demand notices for rates and receipts for payment of rates including those for the year **2013**, which is the year before this suit was filed. That the Applicants have therefore been upto date with payments of rates for the suit land with the Siaya County Government up to the year 2013.

c) That the Applicants case is that they have never defaulted in the payments of rates for the suit land and the plot could not have been lawfully reposed and reallocated to the 2nd Respondent who later sold it to the 3rd Respondent unless through fraud.

d) That the 3rd Respondent acquired the suit land on 8th September 2011 from the 2nd Respondent who had been allocated the plot through the letter of allotment dated 31st March 2009. That the 3rd Respondent position is that the suit land had initially belonged to one **Joseph O. Otieno** and was reposed by the Siaya Municipal Council in 2007.

e) That the County Government of Siaya, the 1st Respondent, has not so far participated in the proceedings and the court cannot at this stage ascertain whether the plot No.5 claimed by the Applicants and the one claimed by the 2nd Respondent is one and the same on the ground or two different plots with the same reference.

f) That the Applicants have established reasonable grounds for the need to have the legal status of the suit land maintained pending the hearing and determination of the suit. They have also shown that there is need to ensure no permanent changes are carried on the suit property in the meantime.

6. That flowing from the foregoing, the court finds the notice of motion dated 24th June 2014 has merit and is allowed in terms of prayer 3 with costs in the cause.

It is so ordered.

S.M. KIBUJA

ENVIRONMENT AND LAND JUDGE

DATED AND DELIVERED ON 21ST DAY OF SEPTEMBER 2016

IN THE PRESENCE OF;

APPLICANTS 2ND Present

RESPONDENTS Absent

COUNSEL Mr Masheti for Ochieng and Nyanga for 2nd and 3rd Respondents respectively

S.M. KIBUJA

ENVIRONMENT AND LAND JUDGE

21/9/2016

21/9/2016

S.M. Kibunja J

2nd Plaintiff present

Mr Masheti for Nyanga for 3rd Defendant

Mr Ochieng for 2nd Defendant.

Court: Ruling delivered in open court in presence of 2nd Plaintiff and

Mr Masheti for Ochieng and Nyanga for 2nd and 3rd Defendants respectively.

S.M. KIBUJA

ENVIRONMENT AND LAND JUDGE

21/9/2016