



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 69 OF 2016

WYCLIFFE WAGUNDA NYABOLA.....PLAINTIFF

VERSUS

CHARLES NDUSU KARAFKA.....DEFENDANT

RULING

1. **Wycliffe Wagunda Nyabola**, the Applicant, through notice of motion dated 1st April 2016, seeks to have **Charles Ndusu Karafa**, the Respondent, restrained from interfering with his use of **Kisumu/Mamboleo/294-SG and 295 -SG** pending the hearing and determination of the suit. The Applicant listed two grounds on the notice of motion which is also supported by his affidavit sworn on 1st April 2016.
2. The Respondent opposed the application through the affidavit sworn by himself on 12th April 2016.
3. The application came up for hearing on 21st June 2016 when Mr. Nyanga and Kimanga, learned counsel for the Applicant and Respondent respectively, made their rival verbal submissions.
4. The main issue for the court's determination are as follows:
 - a) Whether the Applicant has made a case for temporary injunction order this interlocutory stage.
 - b) Who pays the costs.
5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence by both parties, rival submissions by counsel and come to the following finding;
 - a) That the Applicant bought the plots reference **Kisumu Mamboleo/294-SG and 295 -SG** under the sale agreement dated 17th June 2015, from one **Esther K. Lugalla**.
 - b) That the map availed by the Applicant indicates the ground position of the two plots to between plot numbers 293 and 502 just below a large plot for “**STERING.**” The map is however not signed or certified as a true copy and the court is unable to authenticate its source.
 - c) That the Respondent was allocated plot No. **Kisumu/Mamboleo/502 -SG** vide letter of offer dated 19th November 2010, and bought **Kisumu/Mamboleo/501 – SG** from **Racheal Apiyo** under agreement dated 5th November 2013. That the ground position of plot number **501 -SG and 502 – SG** is shown to be to the right of plot number **500** according to the map provided by the Respondent. The map is also not signed or certified by the public offices concerned and the court

is not able to confirm its authenticity.

d) That the same ground position claimed by the Applicant to be plot **295 -SG** is the same spot the Respondent plot number **501-SG** is positioned.

e) That none of the parties has provided the court with evidence of their plots beacons certificates and the parties may need to consider enjoining the relevant county and national agencies to assist the parties in determining the ground position of their respective plots and the official map of the area.

6. That in view of the foregoing, the court finds that the Applicant has failed to establish a case for issuance of temporary injunction at this interlocutory stage.

The notice of motion dated 1st April 2016 is therefore dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 14TH DAY OF SEPTEMBER 2016

In presence of;

Plaintiff ABSENT

Defendant ABSENT

Counsel Mr. Arikho for Plaintiff/Applicant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/9/2016

S.M. Kibunja J.

Oyugi Court Assistant

Mr Arikho for Plaintiff/Applicant

Court: The ruling dated and delivered in open court in presence of Mr. Arikho for the Plaintiff/Applicant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/9/2016