



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC CASE NO. 339 OF 2015**

**ENOS AJODE ODAGO.....PLAINTIFF/APPLICANT**

**VERSUS**

**THE WARD ADMINISTRATOR**

**NYALENDA 'B' WARD.....1STDEFENBDANT/RESPONDENT**

**THE COUNTY GOVERNMENT OF KISUMU.....2ND DEFENDANT/RESPONDENT**

**ODUMBE GENERAL CONSTRUCTION**

**SUPPLIES LIMITED.....3RD DEFENDANT/RESPONDENT**

**RULING**

1. **Enos Ajode Odago**, the Applicant, through the notice of motion dated 8<sup>th</sup> December 2015, seeks for temporary injunction restraining the **Ward Administrator Nyarenda "B" Ward, the County Government of Kisumu and Odumbe General construction Supplies Limited**, herein after referred to as the 1<sup>st</sup> to 3<sup>rd</sup> Respondent respectively, from carrying out construction or rehabilitation of road on land parcel **Kisumu/Pandieri/3038** or demolishing any structures thereon. The Applicant also prays for costs. The application is based on the four grounds on the notice of motion and supported by the affidavit of **Enos Ajode Odago**, sworn on the 8<sup>th</sup> December 2015.

2. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents opposed the application through the grounds of opposition dated 23<sup>rd</sup> December 2015 setting out five grounds.

3. The application came up for hearing on 15<sup>th</sup> March 2016 when the Applicant's counsel prayed that the case against the 3<sup>rd</sup> Respondent/Defendant be marked withdrawn in accordance with the applicant's/Plaintiff's notice of withdrawal of suit dated 11<sup>th</sup> December 2015. The request was granted. The court further directed that written submissions on the application be filed.

4. The counsel for the Applicant filed their written submission dated 25<sup>th</sup> April 2016 on the same date, while counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed theirs dated 23<sup>rd</sup> May 2016 on the 27<sup>th</sup> May 2016.

5. The issues for determination by the court are as follows;

a) Whether the Applicant has established a prima facie case for issuance of temporary injunction at this interlocutory state.

b) What orders to issue

c) Who pays the costs.

6. The court has carefully considered the grounds on the notice of motion, grounds of opposition, affidavit evidence by applicant, submissions by both counsel and come to the following findings;

a) That from the documentary evidence availed by the Applicant which is not rebutted, land parcel Kisumu/Pandpier/3038 belongs to **Enos Ajode Odago**, the Applicant as confirmed by the copy of the title deed marked **EAO-1**.

b) That the copies of the photographs marked **EAO-4(a) (b), (c)**, and ground report marked **EAO – 3 (a)** by Patrick Opiyo Adero, a surveyor, dated 1<sup>st</sup> December 2015 renders credence to the Applicant's contention that the road works being undertaken has interfered with a portion of his land parcel **Kisumu/Pandpier/3038**. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have not disputed those facts except raising the issue of the name of the road and company carrying out the works which do not rebut the Applicant's evidence that there has been some encroachment onto his land.

c) That whereas the importance of an improved road network in an area cannot be underestimated as it would be beneficial to all the people in that area and others, the road improvement works must be carried out in a way that respects the proprietary interests of the owners of the parcels neighboring such a road. The Applicant has shown through his affidavit evidence that the road works being carried out are encroaching onto his property without his consent. That the Applicant has therefore established that he deserves to be protected through the issuance of restraining orders directed at the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.

7. That flowing from the foregoing, the court finds that the Applicant's notice of motion dated 8<sup>th</sup> December 2015 has merit and is allowed in the following terms:

a) That pending the hearing and determination of this suit, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves, agents, servants, representatives and or any person authorized by them are hereby restrained from demolishing any structures or in any other way interfering with land parcel **Kisumu/Pandpier/3038**.

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

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 26<sup>TH</sup> DAY OF OCTOBER 2016**

In presence of;

Plaintiff/Applicant absent

Defendants/Respondents absent

Counsel Mr Onyango for Plaintiff/Applicant

Mr Rodi for the 1<sup>ST</sup> & 2<sup>ND</sup> Defendant/respondent

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**26/10/2016**

26/10/2016

S.M. Kibunja J.

Oyugi Court assistant

Parties absent

Mr Rodi for 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents

Mr Onyango for Plaintiff/Applicant.

Court: Ruling delivered in open court in presence of Mr. Onyango for the Plaintiff/Applicant and Mr. Rodi for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**26/10/2016**