



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.66 OF 2016
STERLING COMPUTERS LTD.....APPLICANT
VERSUS
AUSTIN ANTONY ONYANGO TUJU.....RESPONDENT

RULING

1. **Sterling Computer Limited**, the applicant, filed the notice of motion dated 12th February 2016 seeking for mandatory and prohibitory injunction orders in terms of prayers 2 and 3 of the notice of motion and costs. The application is based on the six grounds on the notice of motion and supported by the affidavit of **Gladwell Wathoni Buliro** sworn on the 12th February 2016. The application is opposed by **Austin Antony Onyango Tunju**, the respondent, thorough his undated replying affidavit filed on the 14th June 2016.

2. The application came up for hearing on the 11th July 2016 when Mr. Mwaisibwa for the applicant and the respondent in person made their rival

oral submissions.

3. The following are the issues for determination:

(a) Whether the applicant has established a prima facie case for issuance of injunction orders at this interlocutory stage.

(b) Who pays the costs.

4. The court has carefully considered the grounds on the notice of motion, the affidavit evidence by both parties, the rival oral submissions and come to the following determination:

(a) That from the copy of the title deed for parcel **Kisumu/NyalendaB/518** issued on 8th January 1992, the registered proprietor is **M/S Sola Investment Limited** who got registered on 8th March 1990. That M/S Sola Investment Limited are not parties in this application and the main suit filed through the plaint dated 12th February 2016.

(b) That the Plaintiff/Applicant in this suit is named **Sterling Computer Limited** and there is nothing presented to the court to explain its relationship with M/S Sola Investment Limited.

(c) That the Plaintiff/Applicant has not availed any documentary evidence to connect them with the ownership of land parcel **Kisumu/Nyalenda B/518**, which is the subject matter of this suit.

(d) That in view of the foregoing, the capacity of the Applicant to sustain a suit over the land that is registered in the names of another Limited Company has not been established. The Applicant appear to be without capacity in the application and the court do not need to address the merits or otherwise of the other grounds. The Applicant therefore fails to establish a prima facie case with a possibility of success and none of the orders sought can issue.

5. That the notice of motion dated 12th February 2016 is without merit and is dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 26TH DAY OF OCTOBER 2016

In presence of;

Plaintiff absent

Defendant present

Counsel Mr. Mwasibwa for Plaintiff/Applicant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

26/10/2016

26/10/2016

S.M. Kibunja J.

Oyugi court assistant

Defendant/Respondent present

Mr. Mwasibwa for the Plaintiff/applicant.

The Respondent is in person and present.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

26/10/2016

Court: Ruling dated and delivered in open court in presence of Mr. Mwaisibwa for the Plaintiff/applicant and Defendant/Respondent in person.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

26/10/2016