



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**LAND CASE NO.200 OF 2014**

**JOHN OWUOR AKACH.....APPLICANT**

**VERSUS**

**JOSEPH OLOO AKACH.....1<sup>ST</sup> RESPONDENT**

**EUDIA ANYANGO .....2<sup>ND</sup> RESPONDENT**

**COLLINS NYARIRO AKACH.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicant, **John Owuor Akach**, through notice of motion dated 4<sup>th</sup> July 2014 seeks for **Joseph Oloo Akach, Eudia Anyango and Collins Nyariro Akach** hereinafter referred to as the 1<sup>st</sup> to 3<sup>rd</sup> Respondents respectively, to be restrained from trespassing into or interfering with the Applicant's use of land parcel Kisumu/Rata/1367 pending the hearing and determination of this suit.

The application is based on the seven grounds on its face and the supporting affidavit sworn by **John Owuor Akach** on the 8<sup>th</sup> July 2014.

2. The application is opposed by the Respondents through their joint replying affidavit sworn on 26<sup>th</sup> October 2015.

3. The application came up for hearing on the 28<sup>th</sup> June 2016 when

Mr. Onyango, learned counsel for the Applicant, and the three Respondents in person made their rival verbal submissions.

4. The issue is whether the Applicant has made a case for the issuing of injunctive orders at this interlocutory stage. Secondly who pays the costs.

5. The court has considered the grounds on the notice of motion, the affidavit evidence by both sides, the rival submissions and come to the following determinations;

a) That the Applicant and the Respondents are related by being the sons and widow to the late **Shadrack Akach Akach**.

b) That though the Applicant has claimed that the Respondents entered onto the suit land in 2011, the Respondents have disputed that claiming that they have been in occupation for many years and

were in possession and occupation by the time **Shadrack Akach Akach** died.

c) That though the Applicant is one of the three registered proprietors to the said land, the two others have not indicated their support to his application or their distaste to the Respondents occupation.

d) That in view of the finding in (b) and (c) above, the court finds that the Applicant has not established a prima facie case for temporary injunction orders to be issued at this stage. That it is preferable and just that the parties continue occupying the land the way they have been doing as this suit is heard and determined. That so as to foster the unity of the parties who are family members, each party will bear their own costs in the notice of motion.

6. That flowing from the foregoing the notice of motion dated 4<sup>th</sup> July 2024 is dismissed with each party bearing their own costs.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 5<sup>TH</sup> DAY OF OCTOBER 2016**

In presence of;

Applicant Present

Respondents Present

Counsel Mr Olel for the Applicant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

5/10/2016

5/10/2016

**S.M. Kibunja J.**

Oyugi Court Assistant

Applicant present

Respondent present

Mr Olel for the Plaintiff

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

5/10/2016

Court: Ruling delivered in open court in presence of all parties and

Mr Olel for the Applicant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**5/10/2016**