



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO.94 OF 2012**

**RAPHAEL WAMBURA.....PLAINTIFF**

**VERSUS**

**FRANCIS OKECH OGENDO .....DEFENDANT**

**AND**

**NICHODEMUS ATITIO ARODI.....APPLICANT**

**RULING**

1. The application dated 13<sup>th</sup> April 2016 is brought by **Nichodemus Atito Arodi**, the applicant, seeking to be enjoined as a defendant or Interested Party in the suit where **Raphael Wambura** is the Plaintiff and **Francis Okech Ogendo**, the Defendant, on the basis that he is the registered proprietor of the suit land. The application is supported by the Applicant's affidavit sworn on 13<sup>th</sup> April 2016 to which is annexed a copy of the land sale agreement between the Defendant and the Applicant dated 17<sup>th</sup> April 2014, and a copy of title deed issued on 25<sup>th</sup> September 2014 in the names of Applicant among others.
2. The application is opposed by the Plaintiff through his affidavit sworn on 27<sup>th</sup> May 2016 deponing among others that the transactions between the Defendant and the Applicant was in total disregard of the caution he had filed over the suit land on 8<sup>th</sup> June 2011, which was fraudulently removed without his knowledge. That as his agreement with the Defendant was earlier than that between the Defendant and the applicant, then he has a better claim over the suit land than the applicant.
3. The Applicant's counsel filed their written submissions dated 12<sup>th</sup> July 2016 while the Plaintiff's counsel filed theirs dated 7<sup>th</sup> September 2016.
4. The issue for consideration is whether the Applicant has established that his being enjoined into this suit is necessary for the court to determine all the questions involved in the suit.
5. The court has considered the grounds on the notice of motion, affidavit evidence and written submissions by both sides and come to the following findings;
  - a) That both the Plaintiff and Applicant entered into land sale agreement at different times with the Defendant. That the sale agreement between the Plaintiff and Defendant of 30<sup>th</sup> July 2009 was over a parcel of land measuring 0.15 hectares from **Kisumu/Nyalenda/478**, whose total acreage was 0.23 hectares as per the attached copy of the register. That the sale agreement between the Applicant and Defendant dated 17<sup>th</sup> April 2014 is over land parcel **Kisumu/Nyalenda 'B'/2234**,

measuring 0.15 hectares, registered in the names of the Applicant on the 25<sup>th</sup> September 2014.

b) That the pleadings filed by the Plaintiff and Defendant confirms that parcel **Kisumu/Nyalenda B/2234** is one of the two parcels subdivided from parcel **Kisumu/Nyalenda B/478**.

c) That the foregoing findings shows that the parcel of land **Kisumu Nyalenda B/2234** which the Plaintiff sued the Defendant for under the plaint dated 7<sup>th</sup> November 2012, is no longer in the names of the Defendant as the same was transferred to the Applicant's name on the 25<sup>th</sup> September 2014. That it is therefore important that the Applicant be enjoined in these proceedings as a second Defendant to enable the issues of ownership and title to the said land be determined in this suit. That failure to do so would mean that should the plaintiff be successful, he would be forced to initiate fresh proceedings against the Applicant which would be more expensive both in time and resource on the parties and the court.

6. That in view of the foregoing the notice of motion dated 13<sup>th</sup> April 2016 has merit and is allowed as prayed with costs in the cause. That the Applicant is hereby enjoined as the 2<sup>nd</sup> Defendant and accordingly the Plaintiff do file and serve an amended plaint incorporating the Applicant as the 2<sup>nd</sup> Defendant within the next 21 days.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 30<sup>TH</sup> DAY OF NOVEMBER 2016

In presence of;

Plaintiff	Absent
Defendant	Absent
Applicant	Present
Counsel	Mr Arkhio for Mwamu for Plaintiff
	Mr Okello for Awino for Applicant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**30/11/2016**

30/11/2016

S.M. Kibunja Judge

Oyugi court assistant

Applicant present

Mr Arikhio for Mwamu for Plaintiff

Mr Okello for Awino for Applicant.

Court: ruling dated and delivered in open court in presence of Applicant and Mr. Arikhio for Mwamu for Plaintiff and Mr. Okello for Awino for Applicant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

30/11/2016