



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO.276 OF 2015**

**WILLIAM OKIYAH OKECH .....APPLICANT**

**VERSUS**

**DAMARIS KAVINZA OKEYO .....1<sup>ST</sup> RESPONDENT**

**GEORGE AWUOCHE.....2<sup>ND</sup> RESPONDENT**

**LINDA OKEYO.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. **William Okiyah Okech**, the Applicant, through the notice of motion dated 29<sup>th</sup> September 2015 seeks for temporary injunction orders restraining Damaris Kavvinza Okeyo, George Awuoche and Linda Okeya, the 1<sup>st</sup> to 3<sup>rd</sup> Respondent respectively, from trespassing collecting rent and alienating the commercial property erected on **Plot No.19/20 Kodiaga** market, Siaya County pending the hearing and determination of this suit. The application is based on the six grounds marked (a) to (f) on the notice of motion and supported by the affidavit of the Applicant sworn on the 30<sup>th</sup> September 2015.

2. The application is opposed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents through the replying affidavit sworn by the 2<sup>nd</sup> Respondent on 16<sup>th</sup> June 2016.

3. The application came up for hearing on the 26<sup>th</sup> July 2016 when Mr Kouko and Emukule, the learned counsel for the Applicant and Respondents respectively made their rival verbal submissions.

4. The following are the issues for the court's determination;

- a) Whether the Applicant has established a prima facie case with a probability of success for issuance of injunctive orders at this interlocutory stage.
- b) Who pays the costs.

5. The court has carefully considered the grounds on the notice of motion, evidence affidavits by both sides, rival verbal submissions by counsel and concluded as follows:

- a) That plot **No.19/20 Kodiaga Market** was allotted to the late John Okeyo Muger and was part of the estate administered by his widow, who is the 1<sup>st</sup> Respondent, namely Damris Kaviza Okeyo, having been appointed the administratrix of the estate and had the grant confirmed in Kisumu H.C. Succession Cause No.37 of 1998.

b) That that the 1<sup>st</sup> Respondent entered into a sale agreement with the Applicant on 25<sup>th</sup> April 2015 which was drawn by Charles Ochieng advocate under which she sold **Plot No.19 and 20 Kodiaga Market** to the Applicant for Kshs.1,300,000/=. That the 1<sup>st</sup> Respondent further guaranteed the Applicant a loan from Kenya Commercial Bank of Kshs.1,600,000/= on 10<sup>th</sup> March 2015 and charged land parcel **Uasin Cuchu/Ngenyilel Scheme/649** upon obtaining land Control board consent on 19<sup>th</sup> February 2015. That the Applicant used part of the proceeds from the loan to pay the 1<sup>st</sup> Respondent the purchase price. That the court notes that the Respondents have not disputed these set of facts.

c) That the 1<sup>st</sup> Respondent has since passed on 22<sup>nd</sup> May 2016 as confirmed in the permit for burial annexed to the replying affidavit. That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent have challenged the transaction between the Applicant and 1<sup>st</sup> Respondent on basis that the latter was mentally challenged and lacked capacity to enter into the alleged transactions. That the court is of the view that the capacity or lack of it on the part of the 1<sup>st</sup> Respondent is a matter that can only be determined with certainty after taking of evidence and not at this stage.

d) That the disbursement of Kshs.1,300,000/=: being purchase price for the plots from the Applicant to the 1<sup>st</sup> Respondent, has not been challenged at this stage and considering that the Applicant has to service the Kshs.1,600,000/= loan, it's only fair and just that he continues to be in the possession of the suit property pending the hearing and determination of this suit. That to hold otherwise would put at risk the land charged by the 1<sup>st</sup> Respondent to secure the loan which could be realized in case there is default in the repayments.

6. That flowing from the foregoing, the court finds that the notice of motion dated 29<sup>th</sup> September 2015 has merit and is allowed in terms of prayer 3 with costs in the cause on condition that all the rent collected is first employed at servicing the loan that the 1<sup>st</sup> Respondent guaranteed the Applicant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 9<sup>TH</sup> DAY OF NOVEMBER 2016

In presence of;

Plaintiff                      Absent

Defendants                      Absent

Counsel                      Mr. Rouko for the Plaintiff

Mr. Yogo for the Defendants

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**9/11/2016**

9/11/2016

S.M. Kibunja Judge

Oyugi Court Assistant

Parties absent

Mr Kouko for Plaintiff/Applicant

Mr Yogo for Defendants/Respondents

Court: Ruling dated and delivered in open court in presence of Mr. Kouko and Yogo for Plaintiff/Applicant and Defendants/Respondents respectively.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**9/11/2016**