



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.68 OF 2016

JOHN ANANGWE OMURUYA.....APPLICANTS

VERSUS

ANERIKO JUMA MACHENGO1ST RESPONDENT

ASMAN OMUSIKOYO SAKA.....2ND RESPONDENT

PHILIP HAGAI AMBANI.....3RD RESPONDENT

RULING

1. **John Anangwe Omuruya**, the Applicant, through the notice of motion dated 16th May 2016, prays for **Anerico Juma Machengo, Asman Omusikoyo Saka** and **Philip Hagai Ambani** the 1st to 3rd Respondents respectively to be evicted from land parcel **South Wanga/Ekero/4480**. The application is based on four grounds on the notice of motion and supported by the affidavit of the Applicant sworn on the 16th May 2016.

2. The application is opposed by the Respondents through a document headed “ **Preliminary objection and response to notice of motion and supporting affidavit of John Anangwe Omuruya dated 23rd May 2016**” by the three Respondents and the replying affidavit of 1st Respondent sworn on the 5th July 2016.

3. The application came up for hearing on 14th July 2016. The applicant adopted the grounds on the notice of motion and the supporting affidavit. The 1st respondent submitted on behalf of the other respondents and himself and adopted the contents of the replying affidavit and added that a toilet facility belonging to the church had been damaged on 3rd June 2016 and some salt solution thrown onto the iron sheets on the church.

4. The issues for determination are as follows:

- a) Whether the applicant has established a prima facie case with a possibility of success for mandatory injunction to be issued at this interlocutory stage.
- b) Who pays the costs of the application.

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

a) that the main prayer in the plaint dated 27th April 2016 is for an order of eviction against the Defendants/Respondents from the portion they are occupying on the land parcel **South Wanga/Ekero/4480**. That the prayers in the notice of motion dated 16th May 2016 are therefore the same in every aspect to the prayers in the plaint.

b) that whereas a court can issue mandatory injunction at the interlocutory stage, that discretion can only be exercised in the clearest of cases as it would amount to determining the main suit through the interlocutory application.

c) that from the facts disclosed by both the Applicant and the Respondents, the latter were placed on the land by **Ibrahim Obongita Shitanda**, now deceased, and a nephew to the Applicant.

d) That the land parcel **South Wanga/Ekero/4480** is a subdivision from **South Wanga/Ekero/82**.

e) That as per the copy of certificate of official search dated 31st March 2016, land parcel **South Wanga/Ekero/4480** got registered in the names of **John Anangwe Omuruya**, the Applicant, on 13th June 2014 while the Respondents were already in occupation. That it is only fair that both sides be given the opportunity to be heard first before determining whether or not eviction orders should issue.

6. That in view of the foregoing, the court finds that the notice of motion dated 16th May 2016 is without merit and is dismissed with costs in the cause.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 2ND DAY OF NOVEMBER 2016

In presence of;

Plaintiff Present

Defendant Present

Counsel N/A

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

2/11/2016

2/11/2016

S.M. Kibunja Judge

Oyugi court assistant

Plaintiff present

Defendant present

Court: Ruling dated and delivered in Open court in presence of all the parties.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

2/11/2016