



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO.102 OF 2016

LABDA CO-OPERATIVE CREDIT AND SAVINGS SOCIETY LIMITED.....PLAINTIFF

VERSUS

LAWRENCE ODHIAMBO AYIEKO.....1ST DEFENDANT

DOMINIC JAWA AJUS.....2ND DEFENDANT

RULING

1. By notice of motion dated 12th May 2016, the Plaintiff seeks for temporary injunction against the Defendants from **“entering, taking possession, trespassing, cultivating, evicting the Plaintiff, disposing the Plaintiff’s members selling, alienation, transferring, charging, pledging, leasing, wasting or in any manner whether or howsoever dealing or interfering with the Plaintiff’s peaceful, quiet possession and title of all that parcel of land known as L.R. No.18992 (Grant No.L.R.83633), any of the assets thereon or any of development thereon or any of the development erected thereon pending the hearing and determination of this suit.”** The application is based on the grounds marked (a) to (j) on its face and supported by the affidavits sworn by Phillip Elias Oloo on the 12th May 2016 and 14th July 2016.

2. The application is opposed by the defendants through their replying affidavits sworn on the 16th June 2016.

3. The application came up for hearing on the 5th October 2016 when Mr. Maube and Nyasimi, learned counsel for the Plaintiff and Defendants respectively, made their oral rival submissions.

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

a. Whether the Plaintiff has established a prima facie case with a probability of success for temporary injunctive orders to be issued at this interlocutory stage.

b. Who pays the costs.

5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence by both sides, the oral rival submission by learned counsel for the parties and come to the following findings;

a. That the Plaintiff is the registered proprietor of the leasehold interest in Land parcel L.R. No.18992 under grant No.I.R. 83633 for 99 years from 1st November 1998. That the land is within

Kisumu Municipality and is indicated in the title document as 1.911 hectares in size.

b. That the Plaintiff has established that the Defendants are using the said land without the authority and permission of the Plaintiff who as the registered proprietor should enjoy the rights and privileges in accordance with **Section 24 and 25** of the Land Registration **Act No.3 of 2012**.

c. That though the Defendants response to the Plaintiff's claim is that the land they use is not adjudicated and is part of block **8478/Kisumu**, the fact that the Plaintiff have been registered with their portion can only have been done after its boundaries were demarcated and then registered.

d. The Defendants have lodged a counterclaim against the plaintiff vide their statement of defence and counterclaim dated 16th June 2016 seeking for two declaratory orders that the plaintiff land was obtained through fraud and hence null and void, and further that the land is part of parcel **8474/District of Kisumu** which is part of their ancestral land. That the provision of **Section 26** of the Land Registration **Act No.3 of 2012** obligates this court to take the person registered by the Registrar as proprietor of a parcel of land to be the absolute and indefeasible owner . The same section provides when and how the title of such a registered proprietor can be impugned. That as of this time, the Plaintiff's title has not been impugned as the Defendants challenge through the counterclaim is yet to be heard and determined in their favour.

e. That flowing from the above, the plaintiff has established a prima facie case with a probability of success and as they have offered to furnish an undertaking for damages should they fail in their suit, the temporary injunction orders should issue.

6. That the court finds the notice of motion dated 12th May 2016 has merit and is allowed in the following terms;

a. That the Defendants jointly and severally, by themselves, agents or servants are hereby restrained from transferring, disposing or alienating, wasting or in any other way interfering with the Plaintiff's title to land parcel L.R.No.18992 [Grant No.I.R.83633) or any of the developments and assets thereon pending the hearing and determination of this suit.

b. That the Defendants do pay the Plaintiffs the costs of this application.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 4TH DAY OF DECEMBER 2016

In presence of;

Plaintiff Absent

Defendants Absent

Counsel Mr. Odeny for Maube for Plaintiff/Applicant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/12/2016

14/12/2016

S.M. Kibunja Judge

Parties absent

Mr. Odeny for Maube for Plaintiff/applicant

Court: Ruling dated and delivered in open court in presence of Mr. Odeny for Maube for Plaintiff/Applicant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/12/2016