



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.106 OF 2015

BISHOP CORNELL WAGUMBA OPONDO.....1ST PLAINTIFF

**GEORGE OWINO MURUKA.....2ND
 PLAINTIFF**

**JAMES KABANA AWICH.....3RD
 PLAINTIFF**

(Suing on behalf of themselves and on behalf of all the

**Members of true JUESUS
 CHURCH)**

TRUE JESUS CHURCH.....4TH PLAINTIFF

VERSUS

**JOSEPH OSUIMBA KOJO.....
DEFENDANT**

RULING

1. **Joseph Osumba Kojo**, the Defendant, filed the chamber summons dated 11th November 2015 against **Bishop Cornell Wagumba Opendo, George Owino Muruka, James Kabana Awich and True Jesus Church**, the Plaintiffs, seeking to have one Romanus Juma Awich enjoined as an Interested Party so as to respond to the Plaintiffs suit. The Defendant has listed five grounds on the summons which is also supported by his affidavit sworn on 9th November 2015. The main ground set out by the Defendant is that he had entered into a land sale agreement with the said Romanus Juma Awich on 27th October 1999 over the suit property and should therefore be enjoined in the suit.

2. The application is opposed by the Plaintiffs through the affidavit sworn by Bishop Cornell Wagumba Opondo on 8th December 2015 on the following main grounds;

- a) That the said Romanus Juma Awich was the Vice chairman of the 4th Plaintiff Church at the time of the 1999 sale agreement and therefore acted as an agent of the church.
- b) That no land Control board consent on the sale agreement was obtained within six months as required by the law. That the 4th Plaintiff had taken possession of the suit land and have remained in possession for the last 16 years.

c) That the Plaintiffs claim is based on adverse possession and there is no need to enjoin the said Romanus Juma Awich.

3. The application came up for hearing on the 20th September 2016 when Mr. Kowino and Mr. Orengo, learned counsel for the Defendant and Plaintiffs respectively made their rival oral submissions.

4. The following are the issues for determination:

a) Whether the Defendant has established that enjoining Romanus Juma Awich in the proceedings will help the court determine all the issues before the court.

b) Who pays the costs.

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

a) That this suit was commenced by the Plaintiffs through the originating summons dated 8th May 2015 under **Order 37 Rule 7** of the Civil Procedure Rules, **Section 7, 17, 37 and 38** of the Limitation of Actions Act **Chapter 22** of Laws of Kenya and **Section 28 and 30** of the Registered Land Act **Chapter 300** of Laws of Kenya (now repealed). The suit seeks to have the title to land parcel **Karachuonyo/Kobala/1347**, registered in the name of the Defendant, declared extinguished and the Plaintiffs be registered as proprietors for having been in adverse possession for more than 12 years.

b) That the copy of the register and certificate of official search of the said land, both issued on 28th April 2015, confirms that the land is in the name of Joseph Osumba Kojo, alias Osumba Kojo, the Defendant, from 14th December 2003.

c) That the alleged sale agreement between the Defendant and Romanus Juma Awich of 27th October 1999 never received the mandatory land control board consent in accordance with **Section 6** of the Land Control Act Chapter **302** of the Laws of Kenya and may have become void. That if that is so then the Plaintiff's recourse may be for recovery of the purchase price paid in accordance with **Section 7** of the said Act. That the sale agreement of 27th October 1999 cannot therefore be the basis or foundation of the letter of consent dated 18th March 2015 and the transfer document of 30th March 2015 exhibited to the Defendant's supporting affidavit sworn on 9th November 2015.

d) That as the interest over the suit land, that Romanus Juma Awich may have against the Defendant would be based on a sale of land contract, while the Plaintiff's claim is on adverse possession, the court finds that the Defendant has not established that the inclusion of Romanus Juma Awich in this proceedings will be necessary to have the issues before the court determined.

6. That for reasons set out above, the chamber summons filed by the Defendant dated 11th November 2015 has no merit and is dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 7TH DAY OF December 2016

In presence of;

Plaintiffs Absent

Defendant

Counsel Mr Otieno for Abande for Defendant/Applicant and
 Mr. Orengo for Plaintiff/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/12/2016

7/12/2016

S.M. Kibunja Judge

Mr Otieno for Abande for Defendant/Applicant

Mr Orengo for Plaintiff/Respondent

Court: Ruling dated and delivered in open court in presence of

 Mr Otieno for Abande and Mr Orengo for Plaintiffs/Respondents.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

7/12/2016