



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.155 OF 2016

NOAH JACOB MWIVANDA .....PLAINTIFF

VERSUS

WILSON YAOLA SIFUNA.....1<sup>ST</sup>  
DEFENDANT

ROBERT KUNDU MAKHANU.....2<sup>ND</sup>  
DEFENDANT

THE COUNTY GOVERNMENT OF KAKAMEGA.....3<sup>RD</sup>  
DEFENDANT

RULING

1. By notice of motion dated 19<sup>th</sup> August 2016, **Noah Jacob Mwivanda**, the Plaintiff, seeks injunctive order for **Wilson Yaola Sifuna**, **Robert Kundu Makhanu** and **County Government of Kakamega**, the 1<sup>st</sup> to 3<sup>rd</sup> Defendants respectively, to be restrained from “constructing or further constructing houses on land parcel known as **Kakamega/Kongoni/2278**, or accessing or remaining on the same or interfering with the said land in any other manner,” pending the hearing and determination of this suit. The application is based on ten grounds marked (a) to (j) and affidavit sworn by Noah Jacob Mwivanda, on the 19<sup>th</sup> August 2016.

2. The application is opposed by the Defendants through the replying affidavit sworn by Wilson Sifuna Yaola on 3<sup>rd</sup> September 2016.

3. The application came up for hearing on 27<sup>th</sup> September 2016 when Mr. Musiega and Ombito, learned counsel for the Plaintiff and Defendants made the oral rival submissions.

4. The following are the issues for the courts determination;

a) Whether the Plaintiff has established a prima facie case for injunctive orders to be issued at the interlocutory state.

b) Who pays the costs.

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

a) That the Plaintiff claim is over land parcel **Kakamega/Kongoni/2278** which from the copy of the certificate of official search dated 18<sup>th</sup> August 2016 that is annexed to the supporting affidavit was registered in his names on 20<sup>th</sup> March 2007 and title deed issued on 3<sup>rd</sup> April 2003. The dates are rather confusing as the title could not have been issued before registration. That the Plaintiff has not explained whether there is a mistake or error on the dates of issue of the title deed carried in the two documents and which of the two dates is correct.

b) That the Defendants availed another certificate of official search dated 29<sup>th</sup> June 2016 for land parcel **Kakamega/Kongoni/2278** showing that on the 23<sup>rd</sup> December 2002 it was registered in the names of the Diocese of Kenya Registered Trustees (St. Josephs Kongoni Catholic Church) and the title deed issued.

c) That the acreage of the suit land in the certificate of official search in the name of Plaintiff is indicated as 0.023 hectares while that in the name of the Church is 0.694 hectares.

d) That the Diocese of Kenya Registered Trustees (St. Josephs Kongoni Catholic Church) are not a party in this suit and have in their possession documents to the same land, albeit bigger in acreage, like the Plaintiff herein.

e) That the Defendants have also provided the court with a copy of certificate of official search for **Kakamega/kongoni/323** dated 1<sup>st</sup> April 1999 which they submit has a relationship with the suit land and that it is also the subject matter in **Kakamega HCCC No.535 of 2014** which is still pending in that court. That on the suit land are various public utilities and therefore it is doubtful at this stage whether it is private land as claimed by the Plaintiff, or public land.

f. That in view of the existence of two title deeds over the same land **Kakamega/Kongoni/2278**, one in the name of the Plaintiff and the other in the name of the church, there are doubts and to which of the two documents is genuine and the correct acreage of the land. That this leads the court to hold that the Plaintiff has failed to establish a prima facie case with a probability of success. That the claim being over land, the loss thereof is capable of being established and compensation in terms of damages offered. That from the evidences and submissions adduced by the Defendants so far, there are several public buildings and facilities on the suit land and it is more convenient to allow those public offices to continue in occupation as this suit is heard and determined.

6. That in view of the foregoing the court find that the notice of motion dated 19<sup>th</sup> August 2016 is without merit and is dismissed with costs and the interim orders of 27<sup>th</sup> September 2016 are hereby vacated.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 14<sup>TH</sup> DAY OF DECEMBER 2016

In presence of;

Plaintiff Absent

Defendants Absent

Counsel Mr Musiega for the Plaintiff

Mr Odeny for Ombito for Defendants

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**14/12/2016**

14/12/2016

S.M. Kibunja Judge

Parties absent

Mr. Odeny for Ombito for Defendant/Respondent

Mr. Musiega for Plaintiff/Applicant

Court: Ruling dated and delivered in open court in presence of Mr. Musiega for the Plaintiff and Mr. Odeny for Ombito for the Defendants.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**14/12/2016**



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