



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
ELC CASE NO. 63 OF 2017

JOSHUA AGUYA ODANDO.....PLAINTIFF

VERSUS

LUKAS ADIKA ODENYO.....DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 11/11/2016 application brought under Section 1A, and B, 3, 3A & 63e of the Civil Procedure Act & Order 40 rules 1 & 2 of the Civil Procedure Rules 2010 and Order 37 Rules 1, 7, 8, & 14 of the Civil Procedure Rules 2010, Cap 21 Laws of Kenya & Article 159 (1)A, of the Constitution of Kenya 2010 & All other enabling Provisions of the law, by the plaintiff/applicant against the defendant/respondent. He is seeking the following orders:-

a. **THAT** pending the hearing and determination of the instant application, the Honourable court be pleased to grant an interim conservatory orders to protect, preserve and/or conserve the suit land parcel number **KAMAGAMBO/KABUORO/1927** from being alienated, encumbered and/or wasted.

b. **THAT** pending the hearing and determination of the instant application, the Honourable court be pleased to grant an interim order of injunction restraining the defendant/respondent either by himself, agents, servants and/or any one claiming under the said respondent from disposing off, evicting and /or interfering with the plaintiff's peaceful stay/occupation of the suit land parcel number **KAMAGAMBO/KABUORO/1927**.

c. **THAT** pending the hearing and determination of the Originating Summons, the Honourable court be pleased to grant an interim order of injunction restraining the defendant/respondent either by himself, agents, servants and/or any one claiming under him from entering upon, trespassing onto, taking possession, cultivating, building and/or in any way whatsoever form interfering with the plaintiff's rights over a portion of the suit land parcel, that is land number **KAMAGAMBO/KABUORO/1927**.

2. The application is based on the following grounds which include:-

a) **THAT** the plaintiff is jointly registered with the defendant in the suit land parcel number **KAMAGAMBO/KABUORO/1927** wherein he is entitled to 4 acres share of the same.

b) **THAT** the defendant has since disregarded the plaintiff as being in joint proprietorship and he is bound to evict the plaintiff from his portion of the suit land parcel.

c) **THAT** the intended eviction will defeat the ends of justice and the purpose of this suit will be

rendered nugatory unless the defendant is restrained by injunctive orders from this honourable court.

d) **THAT** this is a fit and proper case to grant conservatory orders of injunction.

e) **THAT** it is for the interest of natural justice that the applicant herein be granted ex-debito justitiae.

3. Mr. R. Abisai counsel for the plaintiff/ applicant has asked this court to have the application dispensed with so that the main suit be heard. I note that **Concise Oxford English Dictionary** “defines dispense with” to mean :-

“Get rid of or manage without”

4. I consider the entire application and the request by the plaintiff /applicant’s counsel, **Order 25 Civil Procedure Rule, 2010** governs the withdrawal, discontinuance and adjournment of suits.

5. In the case **of Council of Governors Vs. Senate & Another (2014) eKLR**, the supreme court of Kenya held that a party is at liberty to withdraw a matter and that liberty cannot be taken away. It was further observed that the withdrawal is in consonance with **Article 159 (2) (c) Constitution of Kenya, 2010** on the promotion of Alternative Dispute Resolution methods.

6. I find the application to withdraw the Notice of Motion merited. I accordingly allow it with no order as to costs.

7. Mention 28/9/2017 for pre-trial directions. The defendant be served accordingly.

DATED, SIGNED and DELIVERED at MIGORI this 24th day of July 2017

G. ONGONDO

JUDGE

In presence of :-

Mr. Abisai counsel for plaintiff/applicant

Tom – Court Assistant