



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 23 OF 2015.

WYCLIFFE AMBETSA OPARANYA.....PLAINTIFF

VERSUS

KARANI BALONGO RESPONDENT

RULING.

The Applicant **WYCLIFFE AMBETSA OPARANYA**, through M/S. Wafula Wawire and company Advocates filed the Notice of Motion under certificate of urgency dated 4th March, 2015 against **KARANI BALONGO**, THE Respondent, for injunction against Land parcel Bukhayo/Mundika/9188 and costs. The application is based on the ten (10) grounds on the application and the Applicants' supporting affidavit sworn on 4th March, 2015 to which he annexed copy of register for land parcel Bukhayo/Mundika/1997 which in entry No. 11 shows that the title was closed on 14th October, 2009 upon being subdivided into parcels 9149 to 9214. He also annexed a copy of certificate of official search for parcel Bukhayo/Mundika/9188 which is one of those subdivided from parcel 1997 showing it is registered in the names of the Applicant since 14th October, 2009.

The Respondent opposed the Application and filed the replying affidavit sworn on 15th April, 2015 claiming that the Applicant obtained registration of the suit land fraudulently among others.

On the day the application came up for hearing, the firm of Ouma – Okutta and Associates Advocate filed the Notice of Appointment for the Respondent. The court therefore heard Mr. Wafula and Okutta advocates for the Applicant and Respondent respectively. The court has carefully considered the grounds of the application, submission by counsel, supporting and replying affidavit and find as follows;

1. That the suit land Bukhayo/Mundika/9188 is a subdivision from Bukhayo/Mundika/1997. The copy of the register annexed to the supporting affidavit shows parcel Bukhayo/Mundika/1997 came from parcel 1619 and was registered first on 15th September, 1981 in the Respondent's names. The Respondent then transferred the parcel Bukhayo/Mundika/1997 to Washington Wafula Obwogo on the same date 15th September, 1981 who charged it on 5th November, 1981. The register shows that the suit land was subsequently transferred to Maria Kobingye Wafula on 10th September, 1991 and then to Peterleo Angweli Onalo on 16th February, 1992 who then transferred it to the Applicant herein on 4th December, 2008. At this stage and on the strength of the documentary evidence availed, the proprietor of the suit land is the Applicant herein,
2. That as the registered proprietor of the suit land, the Applicant is entitled to the rights and privileges set out in sections – and - of Land Registration Act, 2012. The Respondent has not filed any suit against the Applicant herein to challenge the registration as proprietor of the suit

- or claiming ownership of the land.
3. That the Applicant, by virtue of being the registered owner of the suit land has satisfied the principles set out in *Giella –vs- Casman Brown* - case and is entitled to the order of injunction as prayed. [The application dated 4th March, 2015 is therefore allowed in terms of prayer 3 with costs in the cause.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 28TH DAY OF MAY, 2015.

IN THE PRESENCE OF;

PLAINTIFF/APPLICANT.....ABSENT.....

DEFENDANT/RESPONDENT.....ABSENT.....

COUNSEL...MR. JUMBA FOR WAFULA FOR PLAINTIFF/APPLICANT.....

JUDGE.