



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 217 OF 2014.

CATHERINE K. ONDATO].....1ST PLAINTIFF/APPLICANT

HENRICO NALOO OUMA].....2ND PLAINTIFF/APPLICANT

=VERSUS=

LEONARD W. OBIMBIRA..... DEFENDANT/RESPONDENT

R U L I N G.

1. CATHERINE K. ONDATO and HENRICO NALOO OUMA, hereinafter referred to as 1st and 2nd Applicants respectively, filed the notice of motion dated 25th May, 2015 seeking for injunction against Leonard W. Obimbira, hereinafter referred to as the Respondent, in respect of land parcels Bunyala/Bulemia/2622 and 2623 pending hearing and determination of this suit. The application is based on four grounds marked (a) to (d) on its face and the undated supporting affidavit sworn by the 2nd Applicant.

2 The application is opposed by the Respondent through the replying affidavit sworn on 29th May, 2015.

3. The application came up for hearing on 3rd June, 2015 and M/S. Omar and Mr. Jumba advocates for the Applicants’ and Respondent’s respectively presented their rival submissions.

4. The court has considered the grounds on the application, submissions by counsel, contents of supporting and replying affidavits plus their annextures and come to the following findings.

- a. That though the Applicants prays for injunction in respect of parcels Bunyala/Bulemia/2622 and 2623, the copy of the certificate of official search dated 16th December, 2014 for parcel Bunyala/Bulemia/2623 shows that the title was closed on 10th February, 2014 upon the land being subdivided into parcels 4106 and 4107. Before the register for Bunyala/Bulemia/2623 was closed, it was registered in the joint names of Henrico Naluo Ouma (2nd Applicant), Hillary Juma Ouma, Pantaleo Ouma, Ojiambo Ouma and Juma Stephen Ouma. This suit was commenced through the plaint dated 15th December, 2014 and filed in court on 16th December, 2014 which is about ten months after the title for parcel Bunyala/Bulemia/2623 was closed. By the time this suit and the notice of motion dated 25th May, 2015, were filed the parcel of land described as Bunyala/Bulemia/2623 did not exist. The court cannot issue orders restraining the Respondent on a parcel of land that does not exist. The court was also not told in whose names the two parcels subdivided from Bunyala/Bulemia/2623 are currently registered and cannot presume that they are in the names of the Applicants herein. .

- b. That the copy of the title deed for parcel Bunyala/Bulemia/2622 annexed to the supporting affidavit shows that the land is registered in the names of five persons, namely, Catherine Khabiria Ondato [1st Applicant], Anne Masimba Ondato, Lilian Otoro Ondato, Maureen Ogema and Cyril Muhanji Ondato. Though the Respondent has not disputed 1st Applicant's title to that land, the Applicants have not disclosed why the other four co-owners of the land are not parties to this application.
- c. That the supporting affidavit does not show that the deponent had the authority of the 1st Applicant to make it. As the deponent of the supporting affidavit is not one of the registered proprietors of Bunyala/Bulemia/2622, the contents of his affidavit cannot be sufficient grounds for issuance of injunctive orders against that the Respondent over that parcel of land.
- d. That there is no materials presented before this court to show that the Respondent has been or has threatened to enter land parcel Bunyala/Bulemia/2622 and destroy the boundary, crops, trees or maim or kill livestock thereon or sell the suit land, which is registered in the names of 1st Applicant and the four others. There is also no specific materials presented to this court to show that the alleged construction was on that land. The orders sought cannot therefore be issued.

5. That having found as in 4 above, I find that the Applicants have failed to establish any of the grounds set out in *Giella -v- Cassman Brown* case which are precondition to the issuance of injunction orders. The application dated 25th May, 2015 is without merit and is dismissed with costs.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON30THDAY OF JUNE, 2015

IN THE PRESENCE OF;

1ST PLAINTIFF/APPLICANT.....PRESENT.....

2ND PLAINTIFF/APPLICANT.....ABSENT.....

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

COUNSEL...MR. MAKOKHA FOR SIGANGA FOR APPLICANT AND MR. JUMBA FOR RESPONDENT.

JUDGE.