



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT BUSIA.

CIVIL CASE NO. 9 OF 2011.

JOHN PETER OTHIENO.....PLAINTIFF/APPLICANT

VERSUS

ANNE OLAWO KIMARU.....DEFENDANT/RESPONDENT.

RULING.

The Plaintiff, through M/S. Gabriel Fwaya Advocates, filed the application dated 11th March, 2011 praying for among others, a temporary injunction against the defendant stopping her from entering onto land parcel Bukhayo/Mundika/8915 pending hearing and determination of this suit. The application is based on the five grounds set out on the face of the application and the supporting affidavit of John Peter Othieno sworn on 11th March, 2011.

The application is opposed by the Respondent, Anne Olawo Kimaru, through her replying affidavit sworn on 9th July, 2011 and filed through her then advocates, M/S. Balongo & company advocates.

During the hearing, Mr. Fwaya advocate appeared for the Applicant and the Respondent was in person. Both adopted their filed submissions dated 6th March, 2012 and 18th March, 2012 respectively. They also made further oral submissions. The court has considered the written and oral submissions and also the contents of the supporting and replying affidavits filed herein, and find as follows:

1. That from the copy of the title deed annexed to the supporting affidavit of John Peter Othieno, sworn on 11th March, 2011, land parcel Bukhayo/Mundika/8915 was registered in the name of the Applicant on 1st July, 2009.
2. That when the court visited the suit land on 10th October, 2012, in the presence of the parties, Land Surveyor and Registrar, the court noted that the plot was “vacant with a tree in the middle of the plot. On the plot is planted maize by Anne Olawo Kimaru. The plot has three electric poles on it.”
3. That the Respondent has in her submission indicated she has no interest in Land parcel Bukhayo/Mundika/8915 and that her interest and claim are on Land Parcel Bukhayo/Mundika/1852.

That from the foregoing, the Applicant has established that he is the registered owner of land parcel Bukhayo/Mundika/8915 and therefore under the principles set out in the case of ***Giella –vs- Casman Brown & co. Limited (1973) E.A 358*** is entitled to the order of injunction prayed for. The application

dated 11th March, 2011 is allowed in terms of prayer 2 with costs in the cause.

It is so ordered.

S.M.KIBUNJA,

JUDGE.

DATED AND DELIVERED IN OPEN COURT ON 9TH DAY OF APRIL, 2013.

IN THE PRESENCE OF;

JUDGE.