



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**LAND AND ENVIRONMENT CASE NO. 289 OF 2013**

**SIMON KHAEMBA MWANJA ..... PLAINTIFF**

**VERSUS**

**JAMIN WASIKE KHAEMBA.....1ST RESPONDENT**

**JOHNSON WASWA KHAEMBA .....2ND RESPONDENT**

**RULING**

1. The Applicant filed a suit claiming ownership of the suit parcel no. E. Bukusu/N. Kanduyi/748 (herein-after referred to as the “suitland”). Contemporaneously, he filed a notice of motion under order 40 rules 1, 2, & 3 of the Civil Procedure Rules. In the motion he has sought for temporary orders of injunction to issue restraining the Defendants by themselves, their agents and or servants from invading, evicting or demolishing the Applicant's houses or trees in respect of land parcel no. E. Bukusu/N. Kanduyi/748 pending the hearing and determination of the suit.
2. The motion is premised on the grounds on the face of it and the affidavit sworn by Simon Khaemba Mwanja – the Applicant. One of the grounds is that the Applicant has been in open, continuous and uninterrupted occupation of the suitland for over 30 years. Secondly on 3<sup>rd</sup> January 2014, some people invaded the suit land and cut down all mature trees claiming they had been sold the land by the Respondents. He moved the court under certificate of urgency and obtained injunctive orders exparte on 14.1.2014 to forestall further damage.
3. When the application came up for inter partes hearing, it was opposed by the Respondents. They filed a replying affidavit sworn by the 1<sup>st</sup> Respondent to counter the facts raised by the Applicant. The 1<sup>st</sup> Respondent depones that the Applicant is a stranger to the estate of his father Khaemba Mumelo – deceased. Further that if any agreement of sale exists then the same is null and void for lack of land control board consent. At paragraph 6 of his replying affidavit, he deposes that the Applicant has forcefully been working on the suit land and thus inter-meddling with the estate of a deceased person.
4. During the hearing, the Applicant made further oral submissions in support of his motion while the Respondents chose to rely wholly on the replying affidavit. I have perused the pleadings and the documents annexed. I also considered the oral submissions made by the Applicant. On one hand the Respondents deny the Applicant has been in occupation of the suit land (par 10 of replying affidavit). On the other hand they admit he is in occupation but is using the land forcefully (par 6 and 9 of the replying affidavit).
5. The Applicant has submitted he has been on the land for over 30 years. According to him, he has been peacefully utilizing the suitland until 3<sup>rd</sup> January 2014 when some people went to cut his mature trees claiming to have bought the land from the Respondents. This fact has not been denied by the Respondents. The Respondents also admitted the Applicant’s son having put up a semi-permanent house on the land in September 2013 to which they did nothing to stop the construction from going on.
6. I am therefore satisfied with the facts brought out in the pleadings that the Applicant has made out a prima facie case with a probability of success. It will be convenient to maintain the status quo pending the outcome of this suit. Given the facts show the Applicant is the one using the land currently, it is imperative that the status remain so. I do hereby grant prayer (3) of the motion with costs in the cause.

Parties are directed to comply with the provisions of order 11 of the Civil Procedure Rules to facilitate the speedy trial of this matter. It is so ordered.

**DATED, SIGNED and DELIVERED** this 22<sup>nd</sup> day of May 2014

**A . OMOLLO**

**JUDGE.**