

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL SUIT NO: 14 OF 2011

FRANCIS SWAGA WASHIKA.....PLAINTIFF

VERSUS

AGGREY SHIRUMBA WATAKO

VINCENT WASIKE WATAKO.....DEFENDANTS

RULING

The application dated 11/7/2012 seeks to discharge, vary or set aside the injunctive orders granted by this court on 7/2/2012. It is supported by the affidavit of the 2nd respondent sworn on the same date. The plaintiff filed a replying affidavit sworn on 6th February 2013. Parties agreed to file written submissions to determine the application.

The background information is that the plaintiff filed an application dated 10/11/2011 seeking orders of injunction against the defendants. The application was fixed for hearing on 7/2/2012 when counsel for the applicant attended court while counsel for the defendants, although served did not attend. The court granted the application in terms of prayer two (2) thereof that orders restrained the defendants or their agents from dealing with the suit land plot number **SOUTH WANGA/LUREKO** 3426 pending the hearing and determination of this suit.

The main contention by the defendant's application is that they live on the suit land. The land was inherited from their fathers. The parties are cousins and the land was registered in the names of the plaintiff's father. They have lived on the suit land all along and they have their houses there. They live with their families and the orders means that they have to vacate. The applicants further contend that previous litigations before the Mumias Land Disputes Tribunal found in their favour and the award was adopted by the court.

On his part, the plaintiff respondent maintains that the defendant's father had two plots namely **MARAMA/SHINAMWENYULI/806** and **S/WANGA/LUREKO/457**. The land in dispute belonged to the plaintiff father who died in 1978. The plaintiff's family filed a succession cause n 1983 and they succeeded the suit land without any objection. The defendants have made several attempts to move into the land but the same have been thwarted by the courts.

I have gone through the submissions by counsel or the plaintiff as well as the pleadings relating to the current application and note that the plaintiff is seeking an eviction order against the defendants in his plaint. The defendants maintain that they are residing on the suit land lawfully. Since there are two competing claims and several court cases between the parties, I do find that the only way forward is for each party to be heard and the dispute determined on its own merit. Allowing the orders to continue is tantamount to evicting the defendants before they are heard I do therefore find the application dated 11/7/2012 merited and the same is granted as prayed.

The orders of injunction that were granted ex- parties on 7/2/2012 are hereby vacated. Costs shall follow the outcome of the main suit. Since this is a land matter, I do direct that the same be listed before the land and Environment court for further directions.

Dated, delivered and signed at Kakamega this 16th day of September 2014.

SAID J. CHITEMBWE

JUDGE