

REPUBLIC OF KENYA

High Court at Bungoma

Civil Suit 97 of 2011

JOHN WATILA MUNYASIA..... APPLICANT

VERSUS

WASIKE SICHANGI..... RESPONDENT

RULING

This ruling is respect to the application dated 18th December 2012. The applicant is the respondent in the originating summons (main suit). He seeks orders;

1. This honourable court be pleased to order for a temporary injunction restraining the applicant/respondent his agents and/or servants from utilizing, collecting monthly rent or in any manner making use of plots no. 38 A and 53 Chwele market pending the hearing and determination of this application interpartes.
2. That the tenants of the premises on the plot 38A and 53 Chwele market deposit the monthly rent to court pending hearing and determination of this application inter parties.

The application is supported by the grounds on the face of it and the affidavit in support sworn by Wasike Sichangi. The application is opposed. The respondent has filed a replying and further affidavit to oppose it. Both parties then gave oral submissions in court for and against the application respectively. It is not disputed that the applicant herein is owner of plot no. 53 Chwele market.. It is also not disputed that he exchanged this plot or gave this plot to Paul Munyasia who carried out some developments on it and currently rent is being collected by the respondent John Watila Munyasia who is son to Paul Munyasia – deceased with plot no. 38.

The issue in dispute is whether with the respondent using plot no. 53, the applicant is entitled to exclusive use of plot No. 38 (call it 38 A & B).

The respondent contends that plot 38 existed wholly as one and that the applicant in collusion with one Josephine Onyancha Munyasia caused it to be sub-divided to create 38 A & 38 B. He has not annexed any document to verify this allegation. He has annexed proceedings which does not relate to the parties to this proceedings. The claimant in those proceedings sold a portion of land to the applicant. At the application stage this court, will disregard the proceedings annexed.

The applicant has stated that the land in dispute no 38 has been sold off to a 3rd party who has already put building materials on site. The respondent denied knowledge of this. The respondent steered clear on who is receiving rents from plot 38 inspite of the applicant's contention that he has been denied access to this plot.

This court finds the applicant has established a prima facie case as to the determination of who owns plots 38 and 53. The respondent is receiving rent from 53 and if him or any 3rd parties has taken possession of plot 38, then the applicant is suffering loss that ought to be ventilated by way of injunctive reliefs. I do grant the application in the following terms.

- 1). The respondent or persons claiming through him be and is hereby restrained from utilizing, collecting rents or in any manner making use of plot nos. 38A & B or 38 pending the hearing and

determination of this suit. The suits accruing from this plot be collected by the applicant.

- 2.) The respondent to continue receiving rents from plot no. 53 pending hearing and determination of the suit.
- 3.) The matter be mentioned in 60 days' time on 13.5.2013 to confirm if the orders have been complied with.
- 4.) Costs of this application to the applicant.

RULING DATED, SIGNED, READ and DELIVERED in open court this 13th day of March 2013.

A. OMOLLO

JUDGE.