

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL CASE NO. 139 OF 2012 (OS)

ALFRED RESSILLY ABWUNZA PLAINTIFF

V E R S U S

AMOS KEGODE GOVEDI (sued on his behalf and as

Legal Representative of the late

Shadrack Govedi Vihima) 1ST DEFENDANT

BONIFACCE GOVEDI KEGODE 2ND DEFENDANT

R U L I N G

In his application dated 4.2.2013 the plaintiff is seeking an order of injunction restraining the defendant from dealing with land parcel number **KAKAMEGA/BUGONDA/1439** pending the hearing and determination of this suit. The application is supported by his affidavit sworn on the same date. Mr. Vadanga, counsel for the applicant submitted that the applicant has been in occupation of the suit land since 1984. When this suit was filed the respondent started utilizing the land. The applicant would like the respondent to be stopped from utilizing the land. In his supporting affidavit the applicant contends that the respondent went to plough the suit land in preparation of the oncoming planting season. He would like the land to be

The defendant filed his replying affidavit sworn on the 29.11.2012. Mr. Chitwah counsel for the respondent submitted that the purported sale agreement between the plaintiff and his seller was for plot number **MARAGOLI/BUGONDA/258** which is different from the current suit property. The respondent has been using the land from time immemorial. The land has never been sub-divided and the defendant is the registered owner of the suit land. It would be unfair to injunct the owner of the suit land.

The pleadings show that the suit land belonged to the late **SHADRACK GOVEDI**. On the 20.12.2010 the defendant was registered as the proprietor being the administrator of the deceased's estate. The plaintiff's claim arises from a sale agreement done in 1978 in relation to plot number **S.MARAGOLI/BUGONDA/258**. The land was sold to the plaintiff by the late **FREDRICK GOVEDI VIHIMA**. From the submissions by both counsels it is established that there is no development on the property in form of a house or trees. According to the plaintiff the defendant has ploughed the land in preparation of the current rainy season. The plaintiff's claim is based on the allegation that he has been utilizing the land since 1984. That allegation has to be proved during a full hearing. The plaintiff has also to prove that indeed plot number 258 is the same as plot number 1439. The plaintiff also has to prove that **FREDRICK GOVEDI VIHIMA** was the same person as **SHADRACK GOVEDI**. As of now the plaintiff's claim by way of adverse possession has not been established. It will not be fair to issue an injunction against the registered owner of the suit property before the plaintiff proves his case. Other than the contention that the plaintiff has been using the suit property there is nothing to prove that claim in form of crops or development on the land.

In the end I do find that the application dated 4.2.2013 lacks merit and same is dismissed as to no orders as to costs.

Delivered, dated and signed at Kakamega this 26th day of June 2013

SAID J. CHITEMBWE

J U D G E