



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO.165 OF 2011**

JOSEPH OTIENO ROMBO alias OMBUYA ROMBO.....APPLICANT

VERSUS

PANDE ROMBO

OLIECH ROMBO.....DEFENDANTS

**RULING**

This is a ruling on a Notice of Motion filed here on 7/10/2011. The motion was filed by the Plaintiff/applicant – **JOSEPH OTIENO ROMBO** alias **OMBUYA ROMBO** against the two defendants/respondents **PANDE ROMBO** (1st defendant) and **OLIECH ROMBO** (2nd Defendant). The supporting law is stated to be order 40 Rules 1 & 2 of Civil Procedure rules, Sections 63 and 3A of Civil Procedure Act and/or any other enabling law.

In essence, what is sought is an order of temporary injunction restraining the defendants whether by themselves, their agents, servants or person claiming through them, from interfering with the plaintiff/applicant's use and possession of his portion of Land Title No. **KISUMU/NYAHERA/1189** and from trespassing thereupon. Provision for costs is also asked for.

The basis of the application is that the plaintiff is a joint owner of land title No. **KISUMU/NYAHERA/1189** (hereafter the suit land) and has all along been using his portion. **BUT** the defendants are said to have abused his constitutional rights by barring him from using or accessing the suit land thus causing him irreparable loss and damage.

There is an affidavit sworn in support deponing, inter alia, that the defendants are plaintiff's brothers and, like him, are registered as joint owners of the suit land.

The late father of the parties is said to have pointed out to each of them their respective portions and each of them has been tilling the portions for food crops.

At some stage however, the plaintiff/applicant, being the eldest son and pursuant to Luo custom, moved out of the suit land and set up home elsewhere. But even then, he continued tilling his portion of the suit land for food crops.

Then sometime in 2011, the area chief summoned the plaintiff/applicant and told him of a claim by the defendant requiring him to stop tilling the land as he had set up home elsewhere. The plaintiff intimated his dissatisfaction with this claim. But things took a turn for the worse later. On diverse dates in March, April and May, 2011, the defendants abused the plaintiff/applicant and chased him from the suit land. Then also on 13/9/2011 the 2nd defendant/respondent is said to have set his sheep on the

plaintiff/applicant's maize crop and on 22nd of the same month both defendant/respondents chased away the plaintiff's workers from the land.

The 1st defendant/respondent filed a replying affidavit on 17/10/2011 in which, among others, he denied interfering with the plaintiff's portion and accused the plaintiff of insisting on moving from his portion to where the 2nd defendant is entitled.

That prompted a denial from the plaintiff/applicant by way of further affidavit filed on 22/11/2011. The plaintiff further stated that contrary to claim by the defendants that he set up home on another piece of family land, he actually acquired the land on which his home stands through purchase.

The second defendant also filed a replying affidavit in which the implication is manifest that the plaintiff/applicant, who is his blood brother, had abandoned the suit portion to him and had actually even assisted him construct a house on that portion. The 2nd defendant also deponed that under Luo customs, it is him as the last born in the house of his late mother – **JENNIFFER AWUOR ROMBO** – and the 1st defendant as the only son of **JULIA ROMBO** who are entitled to the suit land. The plaintiff was said not to be entitled to move back once he set up home elsewhere. The registration of the plaintiff as one of the owners was said to be as a trustee for the family members.

The Court heard the matter inter parties on 12/3/2013. The plaintiff's counsel concisely stated the dispute. He pointed out that the plaintiff and the defendant are jointly registered as owners of the suit land. Their late mother, **ROSA ABONGO RONGO**, is also a joint owner. The plaintiff has all along been tilling his share of the land. But the defendants have now barred him from doing so, hence this suit. Much of what else the counsel said is also clear from the application itself and the supporting affidavit accompanying it.

The defendants/respondent's counsel said much that is in the replying affidavits of the two defendants. He further pointed out that the suit land lacks boundaries and injunctive relief may pose difficulties in enforcement. The defendant's counsel said the best thing is to hear the main case.

From what is availed to the Court, it is clear that the parties are closely related. The suit land originally belonged to their late father but was registered later in their joint names.

It appears that each has his known portion on the ground and the defendants have set up their homes on the suit land. The plaintiff has set up his home elsewhere.

It would appear too that the defendants are averse to the plaintiff's use of his portion of land, the argument being that customs are against it because he is the eldest son and has set up home elsewhere.

The defendant's counsel argued that the suit land lacks clear boundaries. But both sides described in graphic detail the situation on the ground.

It was laid bare to the court who lives on the left, right and what separates the left and right, which is a road passing in between. It is reasonably clear that it is easy to point out who owns which portion. In fact its clear that the plaintiff's portion can be pointed out. It is clear too that the plaintiff is not welcome to the suit land yet he is clearly registered with the others as a joint owner.

Given the clear narrative given by the plaintiff/applicant concerning registration and what is happening on the ground, the Court thinks that a prima facie case is shown.

It is also clear that it is necessary to observe peace so that the dispute can run its full mile in court. This can only happen if a restraining order is granted so that each party does not infringe the interests of the other.

It is for the reason that the court grants prayer 3 in the application with costs to the plaintiff/applicant.

**A.K. KANIARU – JUDGE**

**26/6/13**