



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

LAND AND ENVIRONMENT CASE NO. 35 OF 2013.

BONAVETURE ANTONY MULWENGEPLAINTIFF/APPLICANT.

VERSUS

MARIA NEKESA1ST DEFENDANT/RESPONDENT

JOHN BARAZA WANYAMA.....2ND DEFENDANT/RESPONDENT.

R U L I N G.

The plaintiff, **BONAVETURE ANTONY MULWENGE**, through M/S.John Bovorio and company Advocates filed the notice of motion under certificate of urgency dated 28th May, 2013 seeking for among others,orders of temporary injunction in respect of Land parcel Bunyala/Bulemia/2808 against the defendants. The application is based on the nine grounds on the face of the application and the supporting affidavit by Bonaveture Antony Mulwenge, sworn on 27th May, 2013 with several annexures.

The application is opposed by the defendants through the grounds of opposition filed by their advocates M/S. Ashioya& company Advocates and replying affidavit by John Baraza Were sworn on 25th June, 2013. When the matter came up for hearing on 3rd July,2013, both counsel agreed to proceed with the application through written submissions.

The court has carefully considered the grounds on the face of the application, supporting and replying affidavits, the grounds of opposition and the submissions by counsel and find as follows;

1. That the plaintiff's claim as set out in the plaint is for land parcel Bunyala/Bulemia/2808 which is described to have been known formerly, as Bunyala/Bulemia/2389. The land sale agreement attached to the supporting affidavit clearly shows the sale was of 1 acre from parcel Bunyala/Bulemia/2389. It is quite clear that Land Control Board consent to subdivide land parcel Bunyala/Bulemia/2389 measuring 1.6 hectares was obtained on 2nd March, 1993. There is however no evidence that land Control Board consent to transfer 1 acre of land excised from Bunyala/Bulemia/2389 to the plaintiff was ever obtained.
2. That the certificate of official search for land parcel Bunyala/Bulemia/2389 dated 25th October, 2012 and attached to the supporting affidavit shows that the subdivision was carried out on 27th May, 1993 creating land parcels Bunyala/Bulemia/2759 and 2760. The certificate of official search for land parcel Bunyala/Bulemia/2808 dated 14th May, 2013 and also attached to the supporting affidavit shows that the land was registered in the name of Philip Were Sitoka on 7th December, 1994. There is nothing to suggest that land parcel Bunyala/Bulemia/2808 was a sub division from land parcel Bunyala/Bulemia/2389 from which the plaintiff was buying one acre.
3. That the evidence availed before this court shows that the plaintiff has never been, and is not, the

registered owner of land parcel Bunyala/Bulemia/2808 nor is there any evidence to show that he was ever buying that land.

4. That evidence adduced by all parties show that the registered owner of land parcel Bunyala/Bulemia/2808 and the parcels subdivided from Bunyala/Bulemia/2389, which are parcels 2759 and 2760 is Philip Were Sitoka(Were Sioka) who is reportedly deceased since year 2012.
5. That the plaintiff has not complied with the requirements of the Law of Succession Act, Cap 160 of the Laws of Kenya ,so as to have capacity to file a suit relating to the property of a deceased person.

From the foregoing therefore, the court finds that the plaintiff has failed to show that he has a prima facie case with a high chance of success to warrant the granting of the equitable orders he has requested for. He has also failed to show that he would suffer irreparable damage if the orders sort are not granted or that he deserves the orders on a balance of convenience. The application dated 28th May, 2013 is therefore without merit and is dismissed with cost.

S. M. KIBUNJA,

JUDGE.

DATED AND DELIVERED THIS 25TH DAY OF SEPTEMBER 2013.

IN THE PRESENCE OF;

JUDGE,