

REPUBLIC OF KENYA.

IN THE LAND AND ENVIRONMENT COURT AT BUSIA.

CIVIL SUIT NO. 58 OF 2013.

IN THE MATTER OF THE REGISTERED LAND PARCEL NUMBER.

SAMIA/BUJWANGA/1991 & 1998.

AND

IN THE MATTER OF LIMITATION OF ACTIONS.

ACT CAP 22 LAWS OF KENYA

AND IN THE MATTER OF THE LAND REGISTRATION ACT

BETWEEN.

DR. JULIA OJIAMBOAPPLICANT

VERSUS

MORRIS ODUORI WERE RESPONDENT

R U L I N G.

The Applicant, Dr. Julia Ojiambo, through M/S. Balongo & co. Advocates, filed the notice of motion under certificate of urgency dated 18th July, 2013 with the main prayer being a temporary injunction stopping the respondent, Morris Oduori Were, from interfering with land parcels Samia Bujwanga/1991 and 1998. The application is opposed by the respondent who through M/S. Makokha Wattanga & Luyali Advocates, filed a replying affidavit sworn on 24th July, 2013.

During the interparties hearing of the application, Mr. Jumba and Mr. Watanga Advocates appeared for the applicant and respondent respectively and made their submissions. The court has carefully considered the submissions by counsel and the contents of the supporting and replying affidavits and find as follows;

1. That land parcel No. Samia/Bujwanga/1991 was registered in the names of the respondent, Morris Oduori Were on 15th July, 1998. The copy of the certificate of official search in respect of the said land attached to the replying affidavit and marked MOW 1 shows a restriction on the title has been filed with lands office by the applicant pending the resolution of some disputes. This parcel of land and parcel 1998 are sub-divisions from land parcel Samia/Bujwanga/959.
2. That from the annexure to the replying affidavit marked MOW 2 it is quite clear that the respondent herein had filed Busia High Court Misc. App. No. 133 of 2013 against the applicant herein, seeking to have the restriction placed on land parcel Samia/Bujwanga/1991 vacated. The said application is still pending for hearing.
3. That from the submissions by counsel for the applicant and the contents of the supporting affidavit, the applicant is apprehensive that the two parcels of land subject matter to this application is likely to change hands if the temporary injunction is not issued. This seems to be a reasonable concern which cannot be ignored by the court in view of the prayers in the originating summons.

From the foregoing, the court finds that on the balance of convenience, the applicant deserves the order so as to conserve the subject matter of this suit awaiting the hearing and determination of the case. As such prayer (b) of the application dated 18th July, 2013 is granted with costs in the cause.

S. M. KIBUNJA,

JUDGE.

Delivered on 19th September, 2013.