

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL CASE NO. 68 OF 2012

SIRIAKUS BULEMI CHUNGANI PLAINTIFF

V E R S U S

MARY SHIVACHI DEFENDANT

R U L I N G

The application dated 30.1.2013 seeks to restrain the plaintiff from dealing with plot number **IDAKHO/SAVANE/1290** pending the hearing and determination of this suit. Counsel for both parties agreed to rely on the application and its supporting affidavit on the part of the applicant and the replying affidavit sworn on the 25.2.2013 on the part of the respondent.

The applicant contends that he has been utilizing the suit property for a period of over 40 years and would like to have the status quo maintained pending the hearing and determination of this suit. The purpose of the application is to preserve the subject matter of the suit. In her supporting affidavit the applicant contends that the respondent is aware of the intricacies relating to the suit land including Kakamega High Court Misc. Application No. 3 of 2011, CMCC Misc. Application No. 78 of 2010 and Ikolomani Land Disputes Tribunal case number 10 of 2010.

The defendant in his replying affidavit maintains that he filed an application dated 19.3.2012 seeking similar orders and the same has not been determined. He is the registered owner of the suit land and the decision of the land tribunal that was adopted by the Chief magistrate's court was quashed by the High Court. He exhibited a copy of the title that was issued to him on the 14.10.2010.

I have gone through the pleadings herein and the ruling of Justice Kimaru in Misc. Application No. 3 of 2011. It is clear from that ruling that the applicant had bought the suit land from one **MARY TSIALEKA KANIRA** for **KShs.70,000/=**. The applicant paid a deposit of **KShs.17,000/=** leaving a balance of **KShs.53,000/=**. Later on the seller rescinded the sale agreement and returned the **17,000/=** to the applicant's advocate. Justice Kimaru quashed the decision of the Ikolomani Land Disputes Tribunal that had ordered the seller to receive the balance of **KShs.53,000/=** from the applicant after the expiry of over 10 years. In essence therefore, the applicant's interest on the suit land was partly dealt with by Justice Kimaru. The fulcrum upon which a claim was based was removed through the decision in Misc. Application No. 3 of 2011. I do find that the applicant has no prima facie case with a probability of success against the respondent. The respondent bought the land and was not a party to the dispute before the Tribunal as well as the court. He is the registered owner of the suit property and his purchase has not been nullified by the court.

In the end I do find that the application dated 30.1.2013 lacks merit and the same is hereby dismissed with costs.

Delivered, dated and signed at Kakamega this 30th day of October 2013

SAID J. CHITEMBWE

J U D G E