



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

CIVIL CASE NO.52 OF 2013.

SYLVESTER OKUMU.....PLAINTIFF/RESPONDENT.

VERSUS

AMBROSE OSALO.....1<sup>ST</sup> DEFENDANT/RESPONDENT

PASKAL OJIAMBO OSALO.....2<sup>ND</sup> DEEFENDANT/RESPONDENT

**R U L I N G.**

Sylvester Okumu, the Plaintiff herein filed the notice of motion under certificate of urgency dated 12<sup>th</sup> July, 2013 through M/S. Maloba & co. advocates, for temporary injunction against the Defendants restraining them, their agents, servants and or anyone acting under them from farming, planting, tiling, using and or in any other way interfering with Samia/Budongo/1699. The application is based on the five grounds on the face of the application, the supporting and supplementary affidavits sworn by the Plaintiff on 12<sup>th</sup> July, 2013 and 24<sup>th</sup> July, 2013. The application is opposed by the Defendants through the replying affidavit sworn by the 1<sup>st</sup> Defendant on 18<sup>th</sup> July, 2013 and filed through M/S. Wanyama and co. advocates.

When the matter came up for hearing on 31<sup>st</sup> July, 2013, M/s Maloba and Mr. Wanyama representing the Plaintiff and Defendants respectively consented to have the application dealt with through written submissions. The Plaintiff's counsel filed their written submissions dated 29<sup>th</sup> August, 2013 on the same date while the Defendants' counsel filed theirs dated 23<sup>rd</sup> September, 2013 on the same date.

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

1. That from the copy of certificate of official search for Samia/Budongo/1699 marked S.O – 1, attached to the supporting affidavit and copy of the green card for Samia/Budongo/245 marked S.O 1 and attached to the supplementary affidavit it is clear that the two parcels of land are registered in the names of the Plaintiff.
2. That the Defendants, other than claiming to have been using a portion of land Samia/Budongo/245 for seven years, have not annexed any documentary evidence to show that they are registered owners of the said land. The Defendants have not shown that they have a better title over the land in question than the Plaintiff so as to be allowed to remain on the land as this case is heard to conclusion.
3. That the Plaintiff having availed documentary evidence as the owner of the two parcels of land has satisfied the court that he has a prima facie case with a high chance of success as required in the case ***Giella – vs- Cassman Brown*** and company limited (1973) EA 318 and therefore entitled to temporary injunction as prayed in the application dated 12<sup>th</sup> July, 2013.

As shown above, the court finds that the Plaintiff's application dated 12<sup>th</sup> July, 2013 has merit and is allowed in terms of prayer 3 with costs in the cause.

It is so ordered.

S.M. KIBUNJA.

**JUDGE.**

DATED AND DELIVERED ON 23<sup>rd</sup> DAY OF October, 2013.

IN THE PRESENCE OF;

**JUDGE.**