



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

LAND & ENVIRONMENTAL CASE NO. 68 OF 2013.

**TAMIMA CHAKUPEWA .....1<sup>ST</sup> PLAINTIFF**

**FADILI OSOKAISE OCHUDI ..... 2<sup>ND</sup> PLAINTIFF**

**MWANAIKI RASHID OCHUDI.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**RAMADHAN IMATARA OCHUDI.....1<sup>ST</sup> DEFENDANT**

**SAMWEL IBRAHIM KARIUKI.....2<sup>ND</sup> DEFENDANT**

**MUMIAS SUGAR CO. LTD.,.....3<sup>RD</sup> DEFENDANT**

**R U L I N G .**

The Plaintiffs through M/S. Makokha Oaka & company advocates filed the application dated 23<sup>rd</sup> August, 2013 for injunction orders against the defendants stopping them from receiving and paying cane proceeds in respect of field No.54001400, plot No. 3 Kaliwa, Busia. The application is based on the six grounds on the face of the application, supporting and further supporting affidavits sworn by the 1<sup>st</sup> plaintiff on behalf of himself and the other plaintiffs on 23<sup>rd</sup> August, 2013 and 10<sup>th</sup> September, 2013 as summarized hereinbelow;-

1. That the plaintiffs are the registered owners of land parcels South Teso/Apokor/3156, 3157 and 3158 which are subdivisions from South Teso/Apokor/1244.
2. That the lease agreement dated 10<sup>th</sup> march, 2012 between the 1<sup>st</sup> and the 2<sup>nd</sup> defendants was obtained through misrepresentation and has denied the plaintiffs the right to use the land.
3. That the continued use of the land by the defendants, if allowed to continue, will cause the plaintiffs irreparable suffering which cannot be compensated adequately through damages.

The application is opposed by the defendants through the replying and further replying affidavits sworn by the 2<sup>nd</sup> defendant on 29<sup>th</sup> August, 2013 and 6<sup>th</sup> September, 2013. He avers as follows;

1. That the lease agreement was entered with a consent of the registered owner of the land South Teso/Apokor/1244 namely, Rashid Omukaga Ochudi, who later died in May, 2012 to enable him recover Kshs.700,000/=.
2. That the plaintiffs could not have had the land legally registered in their names in the year 2013 without filing a Succession Cause in respect of the estate of the said Rashid Omukaga Ochudi and therefore lacks capacity to file this suit.

During the hearing of the application, Mr. Oyagi and Mr. Onsongo advocates appeared and made submissions on behalf of the plaintiffs and defendants respectively. I have carefully considered the grounds on the face of the application and the contents of the affidavits filed by the 1<sup>st</sup> plaintiff and the 2<sup>nd</sup> defendant and find as follows;-

1. That land parcel South Teso/Apokor/1244 was as of 11<sup>th</sup> October, 2012 still registered in the names of Rashid Omukaga Ochudi as confirmed by copy the of the certificate of official search attached to the supporting affidavit and marked TCO 02.
2. That the copies of the title deeds in respect of land parcels South Teso/Apokor/3156 to 3158 attached to the supporting affidavit of the 1<sup>st</sup> plaintiff shows that plaintiffs got registered with those parcels of land in February, 2013.
3. That considering Rashid Omukaga Ochudi had died on 14<sup>th</sup> May, 2012 as confirmed by the certificate of death attached to the supporting affidavit of the 1<sup>st</sup> plaintiff marked TCO 3b, it is not clear how the plaintiffs got the land parcel South Teso/Apokor/1244 subdivided into to three portions and transferred to their names without having filed a Succession Cause in respect of the estate of the deceased as required under the Law of Succession Act, Chapter 160 of the Laws of Kenya.
4. That the plaintiffs have failed to meet the test set out in the case of **GIELLA-VS- CASSMAN BROWN & CO. LTD (1973) E.A 358**. This is because the strength of their case is doubtful in view of their failure to explain how they got the land registered in their names, about seven months after the death of the registered owner, without filing a Succession Cause. Secondly, even if the plaintiffs were to succeed in this case, they have not shown that whatever damage they would have suffered if the cane money held by the 3<sup>rd</sup> defendant is released to the 2<sup>nd</sup> defendant would not be easily compensated with an award of damages. The balance of convenience is also not in their favour and their application must fail.

For reasons shown above, the court finds that the plaintiffs application dated 23<sup>rd</sup> August, 2013 is without merit and the same is dismissed with cost. The interim orders issued on 29<sup>th</sup> August, 2013 are hereby vacated.

**S. M. KIBUNJA,**

**JUDGE.**

**DATED AND DELIVERED ON...16<sup>TH</sup>, .....DAY OF OCTOBER,...2013.**

**IN THE PRESENCE OF;**

**JUDGE.**