

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 25 OF 2013.

BIRIAN NUNGO AKWIR PLAINTIFF

VERSUS

JANNES JUMA OLOO]

PETER OWINO AHENDA]..... DEFENDANTS.

GEORGE AGOLA OWIYO]

WILLIAM OWOKO JUMA]

RULING.

The Plaintiff, **BIRIAN NUNGO AKWIR** filed the Notice of Motion dated 24th April, 2013 against the Defendants for a temporary injunction to restrain the Defendants from trespassing onto his land. The application is supported by the Plaintiff's affidavit sworn on 22nd April, 2013. The application is opposed by the Defendants through the replying affidavit sworn by the 3rd Defendant, George Ogola Owiyo, on 21st June, 2013.

M/S. J.V. Juma & co. Advocates and M. A. Ochanji – Opondo, advocates for the Plaintiff/Applicant and Defendants/Respondents, respectively filed their written submissions.

I have carefully considered the supporting and replying affidavits and submissions by counsel and find as follows;-

1. That by the time this suit was filed, the Plaintiff/Applicant was not in possession of the land, subject matter of this suit.
2. That the Plaintiff/Applicant appears to have lost possession of the land in question in the year 2008 when some proposal of a monetary compensation in lieu of land was being pursued.
3. That it would be unfair at this stage to reinstate the Plaintiff/Applicant on the suit land as he is not the party in possession. An order to maintain the status quo until the case is heard and determined is more appropriate.

For reasons set out above, the court finds no merit in the Plaintiff'/Applicant's application dated 22nd April, 2013 and the same is dismissed with costs.

So as to ensure the ownership of the suit land do not change hand before the finalization of this suit, the court on its own motion directs that the parties do maintain the existing status quo pending hearing and determination of this suit.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED THIS 27TH DAY OF NOVEMBER, 2013. IN THE PRESENCE OF;

JUDGE.