

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL CASE NO. 8 OF 2010 (OS)

LONITA LIHAVI 1ST PLAINTIFF

MICHAEL MUSAMBAYI 2ND PLAINTIFF

V E R S U S

GUNYAMA A. GUNYAMA 1ST DEFENDANT

RESPA LISHINDU MACHINJI 2ND DEFENDANT

JACKTONE NYIKULI 3RD DEFENDANT

R U L I N G

In the application dated 18.10.2010 the applicants are seeking an order of injunction against the defendants in relation to plot number **ISUKHA/SHIRERE/2725**. The application is supported by the affidavit of the 1st applicant. The respondents filed a replying affidavit sworn by the 1st respondent on the 1.10.2012. The applicants informed the court that they seek to restrain the defendants from utilizing the suit land as the land belongs to them. Mr. Akwala, counsel for the respondents opposed the application and relied on the replying affidavit. Counsel submitted that the 2nd plaintiff attempted to enter the suit land in the year 2008 but was restrained by a court order in Kakamega HCCC No. 84 of 2008. The applicants claim is for adverse possession and yet the land is registered in the names of the defendants.

Having gone through the application together with the supporting affidavit, it is established that the defendants are the current registered proprietors of the suit land. The applicants contend that the defendants obtained registration by means of fraud. It is also established that the defendants are the ones in occupation. The applicants have to first prove that the registration was fraudulent before they can restrain the defendants from utilizing the suit land. I am seeing any irreparable damage that would be suffered by the applicants should the orders not be granted. The defendants are the registered owners of the suit land and it would be unfair to injunct them at this moment. I do find that the application dated 18.10.2010 lacks merit and the same is dismissed with no orders as to costs.

Delivered, dated and signed at Kakamega this 4th day of December 2013

SAID J. CHITEMBWE

J U D G E