



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL SUIT NO. 48 OF 2011

SEFINA AKELO LALA.....PLAINTIFF

VERSUS

OKINYI GOMBA & 2 OTHERS.....DEFENDANTS

R U L I N G

The parties herein have filed two applications which they are seeking almost the same prayers the same prayers. The plaintiff has filed an application dated 6-4-2011 seeking the following orders:-

- (a) An injunction against the defendants, their agents, representatives, assigns or any other persons acting through their direction from trespassing, ploughing the land, planting sugarcane or in any way interfering with the plaintiff's land parcel No. Kisumu/Wawidhi AII/962 the suit parcel.**
- (b) An order of permanent injunction against the defendants, their agents, representatives, assigns or any other persons acting through their direction from trespassing, ploughing the land, planting sugarcane or in any way interfering with the plaintiff's land parcel No. Kisumu/Wawidhi AII/962 the suit parcel.**
- (c) Cost and interest at court rates.**
- (d) Any other order or relief that this honourable court deems fit and just to grant in the interest of justice.**

The respondent/defendants have equally filed an application dated 28-7-2011 seeking the following orders:-

- (a) This application be certified as urgent and service thereof be dispensed with in the first instance.**
- (b) Pending the hearing and determination of this application inter parties, the plaintiff/respondent, his agents, employers and/or servants be restrained by an order of injunction from interfering with, trespassing, ploughing, planting any crops or in any other way whatsoever disturbing the defendants/applicants' peaceful and quiet enjoyment of land No. Kisumu/Wawidhi AII/593 (inclusive of the purported Kisumu/Wawidhi AII/962).**
- (c) Pending the hearing and determination of this suit, there be a temporary injunction against the plaintiff/applicant, his agents, representatives, assigns or any other persons acting through their direction for trespassing, ploughing, planting any crops or in any other way interfering with the defendants/applicants' land No. Kisumu/Wawidhi AII/593 (inclusive of the purported Kisumu/Wawidhi AII/962).**
- (d) An order be issued directing the officer in charge of station (OCS) Awasi police station and the chief of Awasi location both to individually ensure compliance with orders 2 and 3 above.**
- (e) The plaintiff/respondent be condemned to costs of this application.**

Both parties as stated above seeks temporary orders of injunction against each other in respect to land parcel No. Kisumu/Wawidhi AII/962, though the defendants are referring the same as Kisumu/Wawidhi AII/593.

I have perused both applications and it shall be necessary to begin with the plaintiff's application. His affidavit in support shows clearly that he is the registered owner of the suit property having obtained title in 7-3-2002. He contends that the defendants have trespassed into the said parcel of land and have blocked him from planting sugar cane. His main strength though is the fact that he is the registered proprietor of the suit parcel of land.

The defendant through one Ezekiel Okinyo Gomba have filed a very lengthy affidavit. They have attached several annexures showing that the suit property was a result of sub division of land parcel No. Kisumu/Wawidhi AII/593. They argued that the said Kisumu/Wawidhi AII/593 is still a subject of dispute and that the sub division done was tainted with fraud. They have further alleged that the plaintiff title was fraudulently obtained.

They claim that they have been in the land since 1914 and that they have always regarded it as theirs and that the plaintiff has no claim over the same. Infact it is their contention that the plaintiff does not utilize the land.

The work of this court at the moment is not to go into the substance of the case which ought to be done at the main trial. It is evidently clear that from the plaint, defence and counterclaim that this suit has had a history of litigation. I have perused the several correspondence attached to the defendants affidavit especially those from the provincial administration and the lands office. The letter dated 13-7-2007 from the Land Adjudication and Settlement Department is worth reproducing here, thus **"It has been reported to this office by the agents of Jackson Owino Olango that you agents of Fanuel Ongombe you have destroyed the physical features of the aforecaptioned land and worse of it sold and subdivided the land contrary to the laid down procedures"**.

I have also read the letter dated 21-3-2011 from the District Commissioner Nyando and addressed to Otieno, Yogo and Ojuro & Co. Advocates.

Clearly from the correspondence before this court it appears on the face of it that there is some hidden issues which can only be ventilated through a proper court hearing. It would appear that as early as 1985 there was a case pending for appeal before the transfer in regard to the suit parcel of land.

I have not been told how the plaintiff obtained his title. The production of title is not enough. There must have been a process and especially in such a contested application. I believe that from the affidavit evidence on record, the defendants have a prima-facie case against the plaintiff. I shall therefore dismiss the plaintiff's application dated 6-4-2011 with costs.

Having dismissed the plaintiff's application and for the reasons stated above I shall allow the application by the defendants dated 28-7-2011 with costs.

Ordered accordingly.

Dated, signed and delivered at Kisumu this 20th day of January, 2012.

**H.K. CHEMITEI
JUDGE**

HCK/va