



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL CASE NO. 108 OF 2011 (O.S.)**

**PETER NANDI SHILOMBOLE ..... PLAINTIFF/APPLICANT**

**VERSUS**

**PETRO NJELI LIKALA ..... DEFENDANT/RESPONDENT**

**R U L I N G**

The application dated 31.10.11 seeks orders that the respondent, his agent, servants, employees or anyone claiming any interest on behalf of the respondent in respect of the suit property being that portion of land well identifiable and measuring 136ft x 116ft x 104ft x 102ft being part of that parcel of land known as KAKAMEGA/SHISWA/890 be restrained by way of an injunction from interfering with the applicant's peaceful occupation, use and/or enjoyment of the same until this suit is heard and finally determined. The application also seeks orders for stay of proceedings in Kakamega Chief Magistrate's civil suit No. 275 of 2011 till the hearing and final determination of this suit.

The application is supported by the annexed affidavit of the plaintiff/applicant sworn on 31.10.11. In the said affidavit, the applicant avers he bought and took possession of the suit land in the year 1993. That he fenced the suit land and planted trees, nappier grass and tea crops. That the respondent has been disrupting/interrupting the applicant's farming activities on the said land. That this being a case relating to adverse possession, this court is the one that has jurisdiction to deal with it and therefore CMCC 275/11 Kakamega ought to be stayed as it relates to the same subject matter.

The application is opposed to as per the replying affidavit by the respondent sworn on 2.12.11. In the said affidavit, the respondent states that he is the sole registered proprietor of the suit land and that the applicant entered the suit land on or about 26.7.2011 without any colour of right and without any permission. The respondent has denied claims by the applicant that the applicant bought the said land and has been harvesting tea crop from the said land. The respondent asserts that he has filed CMCC 275 of 2011 at Kakamega Law Courts to protect his rights over the said land and that any claim that the applicant has can be determined within the lower court case.

I have considered the submissions of the counsels herein and read the pleadings filed.

It is noted that the bone of contention herein is the ownership of the suit land. The respondent is the registered owner of the suit land while the applicant claims ownership of the same based on claims of adverse possession. The question before this court at this juncture is whether the applicant is entitled to the injunctive orders sought pending the hearing and determination of the suit. The applicant's claim is that he entered the suit land in the year 1993, fenced it and planted trees, nappier grass and tea crop. Strangely though, the applicant has exhibited an assessment report which reflects the age of the tea bushes as 38 years of age.

On the other hand, the respondent in his replying affidavit has not stated who planted the tea crop in question or who picks the same.

The respondent however concedes that the applicant entered the land in question and that there is a suit pending before the lower court. What is in contention is whether the applicant entered the suit land in the year 2011 or in 1993. In my view, this question can only be answered after the hearing of the main

suit. Whether the applicant has acquired rights over the said land is a question that cannot be answered at this stage.

The issues raised in the application are entirely intertwined with the issues that are for determination in the main suit. In the premises therefore, this court's view is that the status quo be maintained pending the hearing and determination of the suit. I will therefore allow prayer No. 2 & 4 of the application. Costs in the cause.

*Delivered, dated and signed at Kakamega this 23<sup>rd</sup> day of February, 2012*

**B. THURANIRA JADEN**  
**J U D G E**