

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL CASE 123 OF 1998

HASSAN MUSAMBAYI MBARUK..... PLAINTIFF/APPLICANT
VERSUS
NASHON ASEKA DEFENDANT/RESPONDENT
R U L I N G

The application dated 27.7.11 seeks orders as follows:-

“That this honourable court be pleased to order maintenance of status quo as at the time of filing this suit in respect of the suit property NO. ISUKHA/SHIRERE/3245.”

The application is supported by the affidavit of the plaintiff/applicant sworn on 27.7.11. In the said affidavit, the plaintiff/applicant depones that he sold part of land parcel No. Isukha/Shirere/3245 to the respondent in the year 1993. That the respondent did not pay the full purchase price and the applicant consequently declined to sign the transfer documents in favour of the respondent. That the respondent however fraudulently transferred the suit property to himself. The applicant further stated that his rights over the said parcel of land may be extinguished and that he would suffer irreparable loss if he is evicted.

The application is opposed. The defendant/respondent swore an affidavit on 10.10.11 contending that the land the applicant sold to him was a portion of land parcel No. Isukha/Shirere/3186. That following the said sale, land parcel No. Isukha/Shirere/3186 was sub-divided with the applicant being registered as the proprietor of LR NO. ISUKHA/SHIRERE/3244. That the respondent is the registered owner of land parcel No. Isukha/Shirere/3245 and he obtained the title to the parcel of land No. LR. NO. ISUKHA/SHIRERE/3245 and took vacant possession of the same. The respondent accuses the applicant of encroachment on his (respondent’s) piece of land No. Isukha/Shirere/3245.

I have considered the submissions of the counsels and read the pleadings filed herein. The applicant filed this suit in court on 16.9.98. The case is part-heard and has been pending in court for over a dozen years. As far as the present application is concerned, the applicant is guilty of laches. It is not possible to ascertain the status quo that was pertaining on 16.9.98. I agree with the Respondent’s counsel’s submissions that the application is vague and not capable of being allowed as prayed. Consequently, the application is dismissed with costs to the respondent.

Dated Signed and delivered at Kakamega this 16th day of February, 2012

B. THURANIRA JADEN
J U D G E