



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL CASE NO. 143 OF 2011**

**JONAH OCHAMI NANGABO .....PLAINTIFF**

**VERSUS**

**FRANCIS ATWOLI ..... DEFENDANT**

**R U L I N G**

The application dated 14.10.11 seeks orders that an injunction do issue to restrain the Defendant or his servants and or agents from entering, alienating, building on, wasting, occupying or in any other way dealing with the parcel of land known as EAST WANGA/ISONGO/893 until the hearing and determination of this suit.

The application is based on the grounds stated in the application and is supported by the affidavit of the applicant, JONAH OCHAMI NANGABO sworn on 14.10.11.

The application is opposed to as per the replying affidavit of the Respondent, FRANCIS ATWOLI, sworn on 31.10.11.

Mr. Elung'ata Advocate appeared for the applicant and M/S Muleshe Advocate appeared for the Respondent. I have considered the application, the reply to the same and the submissions made by the counsels.

The background of the application according to the Plaintiff's case is that on 22.9.11, the Defendant/Respondent workers or agents, without any colour of right and without the applicant's permission forcefully entered into the applicant's land parcel **NO. EAST WANGA/ISONGO/893**. That the Respondent started fencing off the said land and blocked the entry to the applicant's home. That the Respondent is in the process of assembling construction material on the said land. That all efforts made to persuade the Respondent, his agents and or employees to stop and vacate the suit land have failed.

The applicant contended that he never sold the land in question to the Respondent. The applicant's suspicions are that the Respondent interfered with the land officers at the Lands registry, Kakamega and the suit land subdivided into two portions.

The Respondent on the other hand asserts that the applicant sold part of his land parcel N. East Wanga/Isongo/893 to him at the purchase price of Kshs.1,280,000/= on 15.8.2011.

That the Plaintiff executed the sale agreement and all land transfer documents and that parcel No. EAST WANGA/ISONGO/893 was as a result sub-divided and parcel Nos. EAST WANGA/ISONGO/3587 and 3588 created. That the Respondent subsequently processed the title for his portion of the land (E/Wanga/Isongo/3587), occupied the land and started fencing the same.

The bone of contention is therefore on the ownership of the suit property. The applicant appears to challenge the sale, subdivision and transfer of the said property.

The applicant has contended that he is the registered owner of land parcel No. East Wanga/Isongo/893. He has annexed to his affidavit in support, certificate of official Search (annexure "JON 1"). However, the said certificate of official search reflects that Title No. E. Wanga/Isongo/893 was closed on 24.8.11 upon subdivision and new numbers issued. It is noted that the applicant has not exhibited in court the title to his land. The applicant's affidavit in support does not make any mention of the whereabouts of the said title document.

Although the applicant denies having sold his land, the Respondent in his replying affidavit has exhibited a Land Sale Agreement (annexure "FA 1") and Title Deed No. E/WANGA/ISONGO/3587 (annexure "FA 3"). On the face of it, the sale agreement is between the applicant and the Respondent for the sale by the Applicant to the Respondent, of five acres of land from the parcel of land E/WANGA/ISONGO/893 on 15.8.11 for the purchase price of Kshs.1,280,000/=.

There is no further affidavit evidence by the applicant to challenge the documents exhibited in court by the Respondent.

The Applicant's counsel in his submissions has criticized the agreement as having not been executed before an advocate. He also stated that the names of the witnesses are handwritten on the agreement as opposed to being typed. The Applicant's counsel also criticized the application for Consent of the Land Control Board as not having a receiving stamp, bearing a blurred thumb print and having overwritings on it. This boils down to a challenge of the sale and transfer process. However, the Plaintiff's case seeks injunctive orders. The question before court is therefore whether the Plaintiff's case meets the requirement set out in the case of ***GELLA V CASSMAN BROWN [1973] EA 358***. In my view, it has not. The documents exhibited by the Respondent, *prima facie*, show that land parcel **No. E/Wanga/Isongo/893** is no longer in existence. There are no allegations that the documents exhibited by the Respondent are a forgery.

The orders sought by the applicant have been overtaken by events. The court would be acting in vain if it allowed the orders prayed.

The application therefore fails with costs to the Respondent.

***Delivered, dated and signed at Kakamega this 9<sup>th</sup> day of February, 2012***

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