



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT KITALE**

**Civil Suit 8 of 2012**

**BARNABAS SIMIYU MUNIALO ::::::::::::::::::::::::::::::::::: PLAINTIFF.**

**VERSUS**

**ARNOLD MUSA MASINDE ::::::::::::::::::::::::::::::::::: DEFENDANT.**

**R U L I N G.**

This is an application by the plaintiff for a temporary injunction to issue against the defendant, his servants/agents restraining them from ploughing, leasing, selling, constructing structures or in any other way interfering with the plaintiff's peaceful use and possession of one hundred and fifty five (155) acres of the portion of land described as L.R. No. 5569/2 Saboti pending hearing and determination of this suit. The application is grounded on facts that the plaintiff is the owner of the suit property and that the defendant has no proprietary interests rights thereon. That, the defendant has begun selling the land without authority and that third parties are now erecting illegal structures thereon. Further, that unless the defendant is restrained, the plaintiff is likely to suffer substantial loss and damage.

In the supporting affidavit deponed by the plaintiff dated 9<sup>th</sup> February, 2012 there is a transfer dated 6<sup>th</sup> February, 1969 (Annexure marked "BSM 2") showing that the suit property was lawfully transferred to JaminMusundi, Joseph Wabuyeale and Joseph Wandabwa. There is also a memorandum of agreement dated 7<sup>th</sup> March, 1970 (Annexure marked 'BSM 1) signed between the said JaminMusundi, Joseph Wabuyeale, Joseph Wandabwa and the plaintiff Barnabas Simiyu. The memorandum related to the formation of a business partnership by the four people. His connection with the transfer of the land to three of those people is not shown. The plaintiff is not one of the three people. It is alleged ownership of the material portion is not established by the transfer.

The letter of consent (Annexure "BSM 3') does not indicate the names of the parties expected to benefit from the proposed sub-division save JaminMusundi. The letter alone is insufficient in establishing the plaintiff's alleged proprietary interest in the land. From all the foregoing it is impossible to hold that the plaintiff has established a prima-facie case with probability of success. The plaintiff has also failed to establish that he stands to suffer irreparable injury if an injunction is not granted at his juncture.

The balance of convenience dictates that the "status-quo" existing be maintained pending hearing and determination of the suit. In sum, the present application is dismissed with costs for want of merit.

**[Read and signed this 14<sup>th</sup> day of June, 2012.]**

**[In the presence of M/s. Arunga Adv.forWanyonyi.]**

**J.R. KARANJA.**  
**JUDGE.**