



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**ENVIRONMENTAL & LAND CASE 10 OF 2012**

**PATRICK AYIEKO**

**SEWE.....PLAINTIFF**

**VERSUS**

**JACKSON ODHIAMBO**

**AJWANG.....DEFENDANT**

**RULING**

The plaintiff/applicant's application dated 7-6-2012 is seeking temporary orders of injunction to restrain the defendant/respondent from trespassing on land parcel No. Central Alego/Komolo/1139 pending the hearing and determination of this suit. The same is supported by his affidavit sworn on 7-6-2012.

The gist of his application is that the defendant owns land parcel No. Central Alego/Hono/2428 which borders his except that they are separated by a road reserve. He contends that for a while they have heard a boundary dispute which has taken the intervention of the District Land Registrar.

The said Land Registrar did carry out the exercise of ascertaining the boundaries and his reports dated 19-8-2010 and 23-9-2010 were attached to his affidavit. The applicants contend that even after the said Land Registrar determined the boundaries the defendant trespassed and interfered with it hence this suit.

The defendant has not disputed the fact that he owns Land Parcel No. Central Alego/Hono/2428. His contention is that he has not trespassed on the plaintiff's parcel of Land. As a matter of fact according to him there is a Criminal Case No. 1447/10 at Siaya Law Courts where the plaintiff has been charged with cutting trees without a permit. This case is therefore a cover up.

The respondent further attached a copy of the map of the area in his replying affidavit sworn on 20-6-2012. As per the said map, land parcel No. Central Alego/Komolo/1139 does not exist. In this regard counsel for the respondent argued that the applicant's land lies elsewhere and the orders sought shall be in vain if granted.

The question of whether injunctive reliefs be granted or not are premised on the principles laid down in the now famous case of *Gielle –VS- Cassman Brown* [1973] 358 EA.

Having perused this application, I am satisfied that there is indeed a dispute between the parties herein. The Land Registrar seemed to have determined the issue of boundary between them as per the reports attached to the applicant's affidavit.

It is therefore necessary to preserve the portion as left by the said land officers pending the determination of this suit. In any event the defendant from the submissions of his counsel stands to suffer no loss if indeed land parcel No. Central Alego/Komolo/1139 does not exist.

Each party shall have sufficient time to ventilate their issues during the substantive hearing of this suit. For the foregoing reasons, I shall allow the plaintiff/applicant's application as prayed. Costs shall however abide the main suit.

Dated, signed and delivered at Kisumu this 26th July, 2012.

**H.K. CHEMITEI**

**JUDGE**

In the presence of:

.....for the plaintiff

.....for the respondent

HKC/va