



ALOYS KIMOMWA ONYIEGO.....PLAINTIFF

-VERSUS-

MOSES MOGITA ANYENGA..... DEFENDANT

RULING

The applicant has filed the instant application seeking a temporary injunction to stop the defendant from trespassing onto and interfering with Plot No. **Kisii/ West Kitutu/Bugosero/ 2164** until the determination of this application and a suit in respect of the same property. In the suit filed contemporaneously with this application, the applicant seeks judgment against the defendant and a declaration that the defendant is a trespasser in the suit plot and a permanent injunction restraining the defendant either by himself his agents or his servants from interfering with the suit property.

The application's case is that he bought the suit plot from one **Oruko Okeyo** (now deceased) and thereafter started paying rates to the Gusii County Council in 1986. Minutes of the Council allocating the suit plot to **Oruko Okeyo** and later transferring it to the applicant have been displayed. Also displayed in support of the applicant's case are various receipts issued by the Gusii County Council to the applicant for payment of rates in the year 1986. The applicant has further provided a purported sale agreement between himself and the late **Oruko Okeyo**. The same is however of no probative value as it is written in the Gusii language and no translation thereof has been provided to the Court.

Finally the applicant has averred in the supporting affidavit that he owns a butchery – an ongoing business which stands on the dispute plot.

The application is opposed by the respondent who claims that he has not trespassed on to the plaintiff's plot as he is the owner of Plot No. 2 at Raganga Market allocated to him and two others by the Gusii County Council. He has displayed some receipts to show payment of rates to the Council and a certificate of official search which shows that the plot is reserved for Raganga Market under the Gusii County Council.

When the application came before me, parties consented to canvass the same by way of written submissions which they duly filed and served along with supporting authorities. I have carefully considered the submissions authorities and pleadings on record. The issue for consideration before me is whether the applicant had satisfied the conditions for grant of an injunction in line with the principles set out in **Giella v. Cassman Brown & Co. Ltd [1973]358**

It is apparent from the pleadings that the suit plot **Kisii/West Kitutu/Borgusero/2164** claimed by the applicant and Plot No. 2 Raganga Market claimed by the respondent may be one and the same parcel. The common denominator herein being that the land is the property of the Gusii County Council which appears to have collected rates from the applicant and the respondent at different times. The metamorphosis in the description and ownership can only be determined at the hearing of the main suit.

It is apparent from the pleadings that the applicant and the respondent have undertaken various

developments on the plot. For the applicant, he has averred and which has not been controverted by the respondent that he owns and operates butchery and for the respondent he has commenced the development of a semi permanent structure on the same plot.

In order to serve the ends of justice in this case, I order that the status quo as at the date of this ruling be maintained until the hearing and determination of the suit.

Both parties are prohibited from carrying out any further development on the suit plot pending the hearing and determination of the suit.

Costs of this application will be in the cause in the main suit.

Ruling dated, signed and delivered at Kisii this 23rd day of August, 2012.

R. LAGAT-KORIR

JUDGE

In the presence of :

Edwin Mongare Court clerk

.....Counsel for the plaintiffs/Applicants

.....Counsel for the defendants/respondents

R. LAGAT-KORIR

JUDGE