



JOHNSTONE NYANGWESO MASONGO.....PLAINTIFF

-VERSUS-

PHILIP ONYARI OGENDI

GEORGE MOKORO OGENDI

PHILIP NYAIGERO OGENDI

OMAMBIA MAKENZI

MONG'ARE ONGEKO

EVANS SAGWE NYONG'A DEFENDANTS

RULING

The applicant has filed the present application seeking orders;

- 1. That this application be certified urgent and fit to be heard exparte in the first instance.*
- 2. That pending the hearing and determination of this application, the defendants either by themselves, their servants, agents or otherwise be and are hereby restrained by an injunction from selling, alienating, subdividing, trespassing or from any other way interfering with parcel of land known as Plot L.R. No. 8805-Ikonge Trading Centre.*
- 3. That pending the hearing and determination of this suit, the Defendants either by themselves, their servants, agents or otherwise be and are hereby restrained by an injunction from selling, alienating, subdividing, trespassing or from any other way interfering with the parcel of land known as Plot No. LR No. 8805-Ikonge Trading Centre.*
- 4. That the cost of this application be provided for.*

The application is premised on the grounds that the respondents have trespassed on the suit land which is the property of the applicants and are erecting structures thereon. The applicant is said to have bought the suit land measuring 0.01182 acres from one **Nelson Ndubi** at a consideration of Kshs.20,000/= and a transfer was registered on 22nd July 1970. In 2010 the 1st, 2nd and 3rd defendants proceeded to dispose of the suit land to the 4th, 5th and 6th defendants.

The application is opposed by the respondents who have deponed that the applicant is not the registered owner of *Plot No. LR No. 8805* at *Ikonge Trading Centre* and that the same belongs to the County Council of *Nyamira*.

Parties consented to canvass the application through written submissions which they duly filed and exchanged. I have carefully considered the submissions along with the authority filed by the respondents. The applicant has displayed a copy of title and transfer which shows ownership in common of the suit land by **Johnstone Nyangweso Mosongo** who is the applicant and one **Ogendi Sagwe**. The pleadings show that the 1st, 2nd and 3rd defendants are **Ogendi Sagwe's** sons while the 4th, 5th and 6th defendants are tenants on the suit property. *Prima facie*, there is a nexus in ownership between the applicant and 1st, 2nd and 3rd defendants through the interest in the suit land of **Ogendi Sagwe** (now deceased).

Such nexus is not however clearly demonstrated in the respective submissions of the parties. For the present, it appears that the balance of convenience is against the grant of an injunction as the defendants have demonstrated that they are in actual possession of the suit property and have undertaken development thereon. See ***Giella vs Cassman Brown & Co. Ltd [1973] E.A. 358***

I therefore decline to grant the order for injunction as prayed. In the interest of justice however, and in order to preserve the suit property, I order that status quo be maintained and that there be no further alienation, transfer or sale of the suit land pending the hearing and determination of the suit herein. Costs will abide the outcome of the 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