



SUSAN NYAMOKAMI MARIGA.....PLAINTIFF

-VERSUS-

FRANCIS NYAATA MAROCHA DEFENDANT

RULING

The applicant prays for orders that pending the hearing and determination of the suit, the court issues an order of injunction restraining the respondent, his agents, servants or any other person from implementing the **Suneka Land Disputes Tribunal's** award on parcels **NO. WANJARE/BOGIKIMU/1791**, the suit land. The application is grounded on a very detailed supporting affidavit deposed to by the applicant on 25th October 2011.

In the said affidavit she avers that she is the registered proprietor of the suit land and has attached thereto a copy of the official search certificate and green card. There is no doubt whatsoever, thereafter, that she is the sole lawful registered proprietor thereof.

The applicant plainly admits that there existed a boundary dispute between her and the respondent. The dispute concerned the extent and size of the suit land. Subsequently the respondent filed a claim before Suneka Land Disputes Tribunal being **Case No. 45 of 2010**. The Tribunal found for the respondent and made an award in his favour which was adopted as a judgment of the Court in **Kisii CMC Misc. Appl. No. 64 of 2010** and thus, triggering the filing of the suit and this application.

The facts giving rise to the suit and subsequently the application now before me have been fully set out in the ruling of **Makhandia J.** given on 29th July 2011 and I need not rehash them here.

I have also read and considered in detail the written rival submissions canvassed by the parties.

The main suit is still pending hearing and determination. No doubt it is arguable since an existing registered title is adversely affected. The issue of jurisdiction has been raised. This is, indeed, a substantial issue in the suit. In view of all these concerns, it is only just that the title be preserved intact to abdicate unnecessary expense which may result if the title is altered.

Further, taking into account the principles by which courts have for years been guided in deciding whether or not to grant a temporary injunction – see **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**

I am satisfied that the applicant has shown a prima case with a probability of success.

Again, justice being of paramount concern in such disputes as this, and taking every aspect of the case into account, I think the injunction ought to be granted as prayed and so I grant.

Costs will follow the outcome of the main suit.

It is so ordered.

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/Appellant

.....Counsel for the defendants/respondent

R. LAGAT-KORIR

JUDGE