



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

Civil Case 298 of 2011

JOYCE NYABOKE NYAKUNDI PLAINTIFF

-VERSUS-

JAMES NYANGAU NYAINGO DEFENDANT

RULING

By notice of motion dated 14th December, 2011, the applicant sought the following orders:-

- 1. That this matter be certified urgent and service in the first instance be dispensed with.*
- 2. That pending hearing and determination of this application there be an order of temporary injunction issued against the respondent by himself, his agents, servants and/or any person acting on his behalf or under his authority from executing the decree in Principal Magistrate's court at Nyamira Land Case No. 42 of 2009 against title Central Kitutu/Mwabosire/1621.*
- 3. That pending the hearing and determination of this suit there be an order of temporary injunction issued against the respondent, by himself, its agents, servants and/or any person acting on his behalf or under his authority from executing the decree made in the principal magistrate's court at Nyamira Land Case Number 42 of 2009 against title Central Kitutu/Mwabosire/1621.*
- 4. That costs of this application be provided for.*

Prayer 1 and 2 above are already spent with this court having granted prayer 2 on the 28th day of February 2012.

From the application and the pleadings on record, there has been a long standing dispute between the parties over land parcel No. **West Kitutu/Mwabosire/ 1621**. The said parcel has been the subject of adjudication at the Manga Land Disputes Tribunal Land Case No. 4 of 2009 where the present respondent was the claimant and the applicant was the respondent. The Tribunal ruled in favour of the claimant and the award was subsequently adopted by the SPM's court Nyamira in land case No. 42 of 2009. The court decreed that the applicant surrenders the title deed for land parcel No. 1621 for cancellation. Besides this, the dispute has also been the subject of adjudication at the Senior Principal Magistrate's court Nyamira Succession Cause No. 6 of 1997 where the present respondent was objector to the succession cause in which the applicant was the petitioner. The court ruled that both parties were entitled to share in the estate of the deceased, one **Kerubo Nyaingo**. On record also is a grant issued to the applicant by the SRM's court Nyamira in which both the applicant and the respondent are named beneficiaries along with others.

It is apparent to me from the pleadings on record that the issue of legal ownership and entitlement to the suit land requires determination of the court through hearing of the suit already filed and any counter claim that may be filed by the defendant.

For the moment, and in order to conserve the suit land, I grant the orders of temporary injunction as sought as against the defendant in terms of prayer 3 of the application. In addition in order to prevent any mischief on the part of either party, I order that an inhibition do issue on the suit parcel pending the hearing and determination of the suit.

The costs of this application shall abide the outcome of the suit. It is so ordered.

Ruling dated, signed and delivered at Kisii this 20th day of September, 2012.

R. LAGAT-KORIR
JUDGE

In the presence of:

..... for applicant

..... for respondent

..... court clerk

R. LAGAT-KORIR
JUDGE