



REPUBLIC OF KENYA

High Court at Kisumu

Civil Suit 175 of 2010

**CHRISTINE OYUKO1ST PLAINTIFF /
APPLICANT**

**GAUDENCIA JUMA OKIRI2ND PLAINTIFF /
APPLICANT**

**ACHUNGA OKIRI3RD PLAINTIFF /
APPLICANT**

VERSUS

**SAMSON ANGANGA OKENDODEFENDANT/
RESPONDENT**

RULING

By Chamber Summons Application dated 12th November 2010 the plaintiffs/Applicant are seeking temporary orders of injunction to stop the defendant from inter meddling with land Parcel Number KISUMU / WANGAYA 1/3332 hereinafter referred to as the suit land. The affidavit of Christine Oyuko sworn on 12th November 2010 avers that the land originally belonged to the deceased one Jason Okiri who died on 1st October 1990.

The said affidavit has chronology of events showing the history of the litigation revolving around the suit property. Of great significance in her affidavit is the fact that the defendant though claiming to be registered owner had himself registered using a grant which had been revoked.

Annexure 6 in her affidavit is order of this court dated 2nd September 1999 which annuls the letters of administration issued on 2nd July 1997 to Samson Anganga Okendo vide Muhoroni Succession Cause No. 36 of 1997.

The defendant / respondent has opposed the said application via his replying affidavit sworn on 6th December 2010. The same has raised fundamental issues regarding the suit property including the fact that this matter is resjudicata, having been determined vide Muhoroni Civil Suit Number 36 of 1996 and Kisumu HCCCA Number 126 of 1997.

At this juncture it will not be easy to determine from the rival affidavits the true position regarding the true ownership of the suit property. What is evident though is that the defendant is the registered proprietor of the suit property from 25th March 2008. This is strongly contended by the plaintiffs / applicant.

My observation therefore is that whether the same was lawfully acquired or not is a matter that ought to be allowed to go for full trial.

In light of the famous of case of **Giella =vs= Cassman Brown (1973) E. A. 32.** I do find that the applicants have established a prima facie case against the defendant. Equally should the temporary injunction not be granted the substantive suit shall be rendered nugatory.

In the premises I do allow the application dated 12th November 2010 as prayed under paragraph two (2) thereof. The costs shall abide the main suit.

Dated, signed and delivered at Kisumu this 24th day of October 2012.

**H. K. CHEMITEI
JUDGE**

In the presence of:

..... for the Applicant

.....for the respondent