



REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Civil Application 35 of 2011

REPUBLIC APPELLANT

VERSUS

THE CHAIRMAN, LAND DISPUTES

TRIBUNAL- SOUTH WANGA DIVISION..... RESPONDENT

AND

STEPHEN WERE OBWOGO INTERESTED PARTY

EXPARTE: LEONIDA WERE ODERA

HAGGAI NGAMIA

NYAROTSO

JUDGMENT

The Notice of Motion application dated 25.5.12 seeks orders that the Interested Party/respondent **STEPHEN WERE OWROGO** be restrained by an order of injunction from interfering with the applicant's land pending the hearing and determination of the suit.

The application is supported by the affidavit of HAGGAI NGAMIA NYAROTSO (hereinafter HAGGAI), one of the applicants herein.

The gist of the said affidavit is that the Interested Party, STEPHEN WERE OBWOGO (hereinafter SPEPHEN) is using the Tribunal's decision to gain entry into the Suitland i.e. L.P. NO. S/WANGA/MUSANDA/479. The applicants accused the Interested Party of stopping the applicants' agents from working on the suit land.

According to the applicants, the interests of justice would be served by the maintaining of the status quo since the court stayed the implementation of the Tribunal's orders.

The application is opposed to as per the replying affidavit of the Interested Party, STEPHEN WERE OBWOGO sworn on 7.6.2012. According to the said affidavit, the 2nd applicant, HAGGAI NGAMIA NYAROTSO has never used or been in occupation of the land the subject matter of this case at any given time but that the 2nd applicant claims to have purchased the land from the 1st applicant. The Interested Party claims to have been born and lived on the said land for over forty years and exhibited a letter from the office of the Chief confirming the position.

The applicant swore a supplementary affidavit on 30.8.12 and exhibited a farming contract with Mumias Sugar Company Ltd. which reflects that he farms sugarcane on the land the subject matter of this case. The Interested Party has not rebutted the evidence that the applicant HAGGAI NGAMIA NYAROTSO farms sugarcane on the suit land. On the other hand the applicant had not rebutted the evidence that the Interested Party was born and has lived on the same land for a period of over 40 years.

There has been a long outstanding land dispute between the 1st applicant, LEONIDA WERE ODERA (hereinafter LEONIDA) and the Interested Party (STEPHEN) which dates back to the adjudication period and which seems to have been fuelled by unresolved Succession battles.

Attempts to resolve the dispute through the Land Disputes Tribunal ended up with the Judicial Review proceedings herein which stayed the Tribunal's decision. The dispute between the parties therefore remains unresolved. The position on the ground regarding which party was in occupation of which portion of the land ought to remain the way it was prior to the decision by the Land Disputes Tribunal. The 2nd Applicant (HAGGAI) through the sale transaction with the 1st applicant (LEONIDA) ought to remain in occupation of the portion that LEONIDA occupied including the sugar cane plantation that was transferred to him by LEONIDA. The Interested Party (STEPHEN) ought to remain on the portion that he occupied when LEONIDA was still in occupation of the suit land before the sale to the applicant (HAGGAI) subject to the above status quo the application is allowed. Costs in the cause.

Delivered, dated and signed at Kakamega this 18th day of December, 2012

B. THURANIRA JADEN
J U D G E