



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL CASE NO. 69 OF 2009

PHOEBE ACHIENG OGONGO..... PLAINTIFF

VERSUS

- 1. MILCAH AOKO AJUOGA1ST DEFENDANT**
2. CHURCH OF CHRIST IN AFRICA.....2ND DEFENDANT
3. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. Before court is an application brought pursuant to Order 39 Rule 1 & 2 of the old Civil Procedure Rules and Section 3A and Section 63(e) of the Civil Procedure Act. It seeks for Orders; that the respondents, their servants, agents, employees or any other person acting through them be restrained from entering, erecting any structure, carrying out any developments or any activity or alienating or in any way disposing off the applicants' interest on **LR. NUMBER KISUMU MANYATTA "A"/3692** pending determination of this suit and costs to be provided.
2. The application is supported by the affidavit of the applicant and on grounds that the suit property was unlawfully alienated to the 1st and 2nd respondent yet the applicant has a title disclosing that she has a case against the defendants. That the 1st and 2nd defendants have moved in and caused a perimeter fence to be erected around the suit property and have threatened to begin construction work and that if the works are permitted the applicant will suffer irreparable loss.
3. The 2nd respondent filed a replying affidavit through Archbishop **Habakuk Onyango – Obogno**. The 2nd respondent contended that **Parcel NO. KISUMU MANYATTA "A"/3435** was subdivided into 2 parcels 3692, 3693 and that the plaintiffs title relates to a distinct portion. And that original property 3435 could possibly not have had 2 mutations as alleged by the applicant.
4. The principles governing the issuance of an injunction are well settled as enumerated in the notable case of **GIELLA VS CASSMAN BROWN (1973) E.A.** Both the parties have a mutation form for property **LR. NUMBER KISUMU MANYATTA "A"/3435**. The applicant's version indicates that the property was subdivided into 3 parcels namely **KISUMU MANYATTA "A"/3873, 3872 and 3871**. The plaintiff has a title for 3873. The 2nd respondent's version indicates that the property was subdivide into two **KISUMU MANYATTA "A" 3692 & 3693**. The 2nd defendant has a title for 3692.
5. The 3rd defendant did not file any response on behalf of Ministry of Lands, which response may have explained the correct position. The plaintiff claims that on the ground 3873 is the same as 3692, which the 2nd defendant disputes. It is clear that the court cannot adequately determine the issue at this stage with the information on record and for this reason the court is for preservation of the suit property as the balance of convenience tilts in favour of the applicant.

In the circumstances prayer 2 of the application dated 20th July, 2009 is hereby granted. Costs will follow the outcome of the case.

DATED AND DELIVERED AT KISUMU THIS 4TH DAY OF FEBRUARY, 2011.

ALI-ARONI

JUDGE

In the presence of:

.....applicants in person

..... for State