



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL CASE NO. 114 OF 2010**

**JANE NAMBWA (Suing on behalf of the estate of CHARLES NAMBWA  
SUNGUTI) .....PLAINTIFF**

**VERSUS**

**1. DINA SUNGUTI  
2. BENSON KAKAI**

**SUNGUTI.....DEFENDANTS**

**3. DICKSON N. SUNGUTI**

**RULING**

**1.** Before me is a Chamber Summons premised on the provisions of Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules and the following prayers are sought;

***“1. That the status quo be maintained in respect of the Applicants occupation of land parcel number Kakamega/Bushu/736 pending hearing of this application inter-partes or until further orders of the court.***

***2. That a temporary injunction be issued against the Respondents, their agents, servants or employees restraining them jointly and severally from entering, ploughing, building, charging, or interfering with the Applicant’s occupation of part of land parcel number Kakamega/Bushu/736 pending hearing and determination of this suit.***

***3. That costs of this application be provided for.”***

**2.** The grounds in support are that;

***“(a) The Applicant has been and is still in occupation of the suit land since June 1972 upto date.***

***(b) The Applicant has filed the suit herein against the Respondents seeking title under adverse possession.***

***(c) The Respondents have threatened to evict the Applicant from the suit land.***

**(d) The Applicant has no other place they call home other than the suit land.**

**(e) If the Applicant is evicted from the suit land, she stands to suffer irreparable damage which cannot be adequately compensated by way of damage.**

**(e) The Applicants has established a prima facie case against the Respondent.**

**(f) The orders sought seek preservation of the subject matter of the suit pending hearing and determination of the same.**

**(g) It is in the interest of justice that the orders sought be granted.”**

3. In her Supporting Affidavit sworn on 29.7.2010, Jane Nambwa Sunguti deponed that she has occupied land parcel No. Kakamega/Bushu/736 since 1972 and that the Respondents have threatened to evict her therefrom and that she has built houses on the land and farms on it, and that she will suffer irreparable harm and injury.

4. I should state here that in the Originating Summons dated 29.7.2010, she is claiming five (5) acres out of land parcel number 736 aforesaid and her claim is predicated on adverse possession.

5. Although I see a Memorandum of Appearance and submissions by M/S J. J. Mukavale, Advocates for the Respondents, I see no Replying Affidavit by the Applicant nor do I see any grounds of Opposition.

6. In his submissions, Mr. Mukavale has raised the issue that the Applicant is not the legal representative to the estate of the late Charles Nambwa Sunguti and so his capacity to sue is challenged. Further, that the Respondents obtained the suit land vide a Succession Cause and the transmission to them was through lawful means. Lastly, that in the circumstances, an injunction cannot be issued to the Applicant as the conditions for grant thereof have not been met.

7. I have taken into account the submissions on behalf of the Applicant which are the same as set out above and my view is as follows;

8. Firstly, I have seen no evidence to dispute the fact that the Applicant is in actual occupation of the suit land. Any eviction at this stage will obviously cause damage to the Applicant before her claim for adverse possession can be properly determined, on the merits.

9. Secondly, I have seen a copy of the extract of title for land parcel No. Kakamega/Bushu/736. The land was initially in the names of Sunguti Chituyi and later the same was transferred to Dina Sunguti and thence to the Respondents *vide* H.C. Succ. Cause No. 402/2000. It would seem to me that the Applicant and the Respondents have a common family lineage and it would be best if the dispute is determined by a deep interrogation of the manner in which the Respondents got registered over the suit land and to determine whether the Applicant has any lawful claim to the land.

10. Lastly, in *Ooko vs Barclays Bank of Kenya Ltd. [2002] 2 KLR 394*, Ringera, J. (as he then was),

restated the oft-quoted principles for grant of an interlocutory injunction and I need not repeat them, save to say that in the instant case, the Applicant has satisfied the condition of a *prima facie* case with a probability of success and having also seen that on a balance of probability, her case is not frivolous, it is best to grant prayers 3 and 4 of the Application dated 29.7.2010 and order each party to bear its own costs.

**11.** Orders accordingly.

*Delivered, Dated and Signed at Kakamega this 14<sup>th</sup> day of April, 2011.*

**ISAAC LENAOLA**

**J U D G E**