



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CIVIL SUIT NO.37 OF 2010

IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA

AND

**IN THE MATTER OF ASCERTAINMENT OF OWNERSHIP OF PART OF LAND PARCEL
NO.S. MALAKISI/S.KULISIRU/452**

BETWEEN

PATRICK WAMUKOTA.....PLAINTIFF/APPLICANT

VRS

JOHN TULULA.....1ST DEFENDANT/RESPONDENT
DISMAS MULONGO.....2ND DEFENDANT/RESPONDENT
AGRREY WABOMBA.....3RD DEFENDANT/RESPONDENT
GRACE NANYAMA WAMALWA.....4TH DEFENDANT/RESPONDENT

RULING

This is a ruling on the Plaintiff's application dated 28/4/2010 seeking for orders of a temporary injunction and or a prohibitory order against the Respondents or their agents from wasting, using, damaging, alienating or trespassing seeking or removing anything from the land known as S. Malakisi/S. Kulisiru/452 pending the hearing and determination of this suit. In the alternative, the Applicant prays for orders that status quo be maintained.

The application was heard by way of written submissions. The grounds relied on by the Applicant are that he is in occupation of 1½ acres portion of the land S. Malakisi/S.Kulisiru/452 and that the Defendant is wasting the portion. He now intends to survey and mutate and transfer parcel out of the existing land parcel. It is deponed in the supporting affidavit that the Applicant bought the land from the Defendant in

1973 and took occupation immediately. The Applicant has learnt that the Defendant is in the process of sub-dividing the land for sale. It is for these reasons that he urges the court to award the injunctive orders.

The Respondent denies in his replying affidavit that the applicant is in occupation of the 1½ acres portion and that he took possession in 1973. It is the Respondents' contention that this application does not meet the requirements set out in the law.

An annexure of the Respondents shows that the Respondents had gone before the Applicant herein had lodged a claim before the tribunal in respect of the suit premises which was successful. The award of the tribunal was later quashed by the High Court for lack of jurisdiction. In this suit the Applicant claims title through adverse possession. He claims to be in occupation of a portion of the land S. Malakisi/S.Kulisiru measuring one and half (1½) acres. The Respondent denies the claim and the alleged occupation since 1973. These are matters to be proved through evidence at a later stage.

I have carefully considered the grounds supporting the application and averments in the replying affidavit. The Applicant did not annex any documentary evidence or even photographs to show that he is residing on the land currently and that he has made any developments. I also note that the Applicant has not shown that he is likely to suffer any substantial loss if the orders sought are not granted. No undertaking for damages has been made in this case. For those reasons I do not find any merit in the application as regards the injunctive orders. I therefore decline to grant any orders in terms of prayer 1.

It is not disputed that the parties have a long standing land dispute in relation to the suit premises. This is evident in the annexures showing there was a case before the tribunal in 2005. Judicial Review proceedings were filed in Bungoma High Court in 2007 which ended up in quashing the award in 2009. This case was filed in the year 2010. The case has not been determined and may take time to be heard. It is important that the suit premises be protected from any damage or even disposal pending the hearing and determination of the suit.

For these reasons, I allow prayer 2 of the application that the parties maintain status quo pending the hearing of the suit. Costs in the cause.

F. N. MUCHEMI

JUDGE

Ruling delivered and delivered on the 7th day of June, 2011 in the presence of Mr. Onchiri for the Respondents and Mr. Situma for Areba for the Applicant.

F. N. MUCHEMI

JUDGE

