



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL SUIT NO.124 OF 2010

**KHAMETE WACHIYA.....PLAINTIFF/
APPLICANT**

~VRS~

**SAMSON MUSEE KHISA.....1ST
DEFENDANT/RESPONDENT**

**JOY KHISA.....2ND
DEFENDANT/RESPONDENT**

**EDWIN WAFULA.....3RD
DEFENDANT/RESPONDENT**

RULING

The Applicant Khamete Wachiye in his application dated 26/11/2010 seeks for an order of injunction to issue restraining the Defendant/Respondents by themselves, their servants, workers, brothers, sisters, brother in laws and sister in laws from interfering with the Plaintiff/Applicant's peaceful use, possession and, or occupation of land parcel NO.BOKOLI/BOKOLI/2219 pending hearing and determination of the suit. The application was opposed by the Respondents through grounds of opposition dated 08/03/2011 and filed on 09/03/2011.

The facts leading to this application are that the Applicant is the registered proprietor of land parcel NO.BOKOLI/BOKOLI/2219 upon which the Respondents have encroached and demonstrated hostility against the Applicant. The Respondents have put up structures on the land and prevented the Applicant from utilizing his land.

In their grounds of opposition, the Respondents have denied the allegations and argued that the principles of granting an injunction have not been satisfied. The Defendants admit that they are living on the land in issue and have shown that although it is registered in the name of the Applicant, the said registration was obtained through fraud.

The Applicant has annexed a copy of the title deed in her name Khamete Wachiya for the suit premises issued on the 19/7/2007 and a copy of a sale agreement dated 24/6/2006. A mutation formed for the sub-division of the original parcel BOKOLI/BOKOLI/1819 has also been annexed producing parcel numbers 2218, 2219 and 2220. The parcel number 2219 measures 0.83 hectares. An official search copy showing that there is Land Ref. No.1820 registered in the name of one Lusaria Nangekhe issued in 1999 has been annexed. I suppose this is the parcel which is registered in the name of the Respondents' father and to which the Respondents have refused to occupy. A copy of a charge sheet dated 26/11/2009 in which one Richard Khisa was charged in Webuye court with trespass. It was explained that the case was later withdrawn.

The Applicant's case is that she bought the land from the deceased one Jared Khisa who is the father of the Defendants on 26/08/06 and was issued with a title deed. The respondent's other two parcels arising from the mutation process nos.2218 and 2220 were transferred to other people by the deceased. The parcel number 1820 was registered in the name of Lusaria Nangekhe Khisa to hold in trust of the Respondents. The Applicant fenced her parcel of land but the fence was destroyed by the Defendants. She has tried to cultivate her land but the Respondents have been hostile.

It is not in dispute that the land parcel no. BOKOLI/BOKOLI/2219 is registered in the name of the Plaintiff/Applicant after she bought it from the deceased. The Respondents have alleged that the tile was obtained through fraud. There is no evidence to demonstrate how the fraud was committed and what the affected parties have done about it. The Applicant on the other hand annexed documents proving ownership of parcel number 2019. This is a prima facie case shown by the Applicant. By the Applicant not cultivating her land which she bought four (4) years ago, this is sufficient cause of suffering substantial loss. The Respondents have alternative land which they are supposed to occupy and vacate the suit premises. I note that the prayers sought in the plaint are for mesne profits, for eviction and for a permanent injunction against the Respondents not to occupy the land, to erect structures or in any way interfere with the land. If the prayers sought in this application are granted, the Plaintiff will be facilitated to use her land peacefully and to her benefit pending hearing and determination of the suit. The Applicant has established a prima facie case and demonstrated that she will suffer substantial loss for non-use of her land. The court is not in doubt as to the issue of ownership herein. As such the issue of balance of convenience does not arise.

I am satisfied that the Applicant has satisfied the court on the principles laid down in the case of **GIELLA VRS CASSMAN BROWN**. The application is therefore merited and I allow it with costs to the Applicant.

F. N. MUCHEMI

JUDGE

Ruling dated and delivered this 12th day of July, 2011 in the presence of Mr. Kweyu for Kraidon for Defendant and Mr. Makali for Mr. Kassim for Plaintiff.

F. N. MUCHEMI

JUDGE