



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

Civil Case 125 "B" of 2008

JOHN ONYANGO OTINA & 3 OTHERS PLAINTIFFS

-VERSUS-

CHRISTINE AYORO & 3 OTHERS DEFENDANTS

Coram:

Ali-Aroni, Judge.

Mr. Mwamu for the Plaintiffs

Mr. K'Opot h/b Mr. Ongele for 1 & 2 defendants

Ms. Kamau for Attorney General

N/A for 3rd & 4th defendants

Mr. George Diang'a Court Clerk.

R U L I N G

The application before court is by way of a Chamber Summons brought pursuant to Order XXXIX Rules 1, 2 & 3 of the Civil Procedure Rules. It is supported by the affidavit of the 3rd plaintiff **DANIEL OCHIENG OTINA** dated 17th July, 2009 and on the grounds on the face of the application. The application seeks for restraining Orders against the defendants, their servants, agents, and or employees from interfering, conveying and dealing with Parcel of land known as **KISUMU/MUHORONI/1080**, pending hearing and determination of this suit.

The application is opposed. The defendants filed a replying affidavit sworn by the 2nd defendant **GEORGE OMONDI AYORO** and dated 15th December, 2009.

Both parties claim ownership of the subject matter. The plaintiffs claim title through their late father one **PAUL OTINA ONYANGO**. They allege that the defendants fraudulently obtained title to the said land without their consent. They claim to be in possession since 1967.

The 1st and 2nd defendants on the other hand claim title through their father the late **ELLY AYORO**. They contend that

registration in the name of **PAUL OTINA ONYANGO** was erroneous. That Parcel Number 490 & 489 were affected by the re-alignment of Muhoroni – Chemelil Road. That what remained of the two pieces became a new Parcel 490 which was sub-divided and **PAUL OTINA ONYANGO** was given **PARCEL NO. KISUMU/MUHORONI/1081** and **ELLY AYORO** Parcel **NO. KISUMU/MUHORONI/1080**. They also claim to be in possession.

The principles governing the issuance of an injunction are set out in the notable case of **GIELLA –VS- CASSMAN BROWN & COMPANY LTD (1969) E. A.** The Court of Appeal of East Africa set out the conditions which I am guided by namely; that an applicant must show that he has a prima facie case with a probability of success and that if the Orders sought are not granted, he is likely to suffer irreparable loss not capable of being compensated by way of damages and where the court is in doubt it will grant an Order on a balance of convenience.

It is clear from the evidence so far on record that there is a dispute arising from the re-aligning of Muhoroni – Chemelil Road which affected land around or near the said road. Both parties claim to be in possession. For the court to determine the real issue before it will require more evidence to be placed before it. Secondly, this matter involves land which is an immovable subject. I am unable with the evidence before me to ascertain who is in possession at the moment. I am also of the view that there is need to preserve status quo pending full and final determination of this matter.

In the circumstances, I will invoke the enhanced powers donated to the court by Section 1A and B of the Civil Procedure Act to ensure and to facilitate a just and proportionate resolution of this matter and accordingly I make the following Orders:

- 1. That a temporary injunction be and is hereby issued restraining the parties namely the plaintiffs, the 1st and 2nd defendants by themselves, their agents, servants and or employees, from conveying, transferring and alienating land parcel number KISUMU/MUHORONI/1080 until hearing and determination of the suit.**
- 2. That the status quo prevailing be maintained pending hearing and determination of the suit.**
- 3. Costs in the cause.**

Dated and delivered on 29.01.2010 at

2.00 pm.

ALI-ARONI

JUDGE

In the presence of:

..... present for plaintiffs

.....present for defendants

AAA/hao