

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Civil Case 163 of 2009

FIBI NASIO OKHAKO PLAINTIFF

V E R S U S

JACKSON OKHAKO MAENDE DEFENDANT

R U L I N G

1. The Application dated 10.11.2009 seeks orders of injunction under **Sections 3A and 63 (c) (e)** of the Civil Procedure Act. The Applicant Fibi Nasio Okhako, wife of the Defendant, Jackson Okhako Maende prays therein that her husband aforesaid be restrained from “*evicting, dislocating or displacing*” her from land parcel Marama/Shibembe/533 or the resulting portions known as Marama/Shibembe/1427, 1428 and 1429 until the suit herein is heard and determined.
2. The response by the Defendant is contained in a Replying Affidavit sworn on 1.12.2009 and it is worth noting that at paragraph 3 thereof he depones as follows;

“That it is true the Plaintiff is my first wife and we are staying with her joyfully as husband and wife.”
3. At paragraph 5 he adds as follows:-

“That I and my two families are staying harmoniously and I have no intention (sic) of chasing away my first wife.”
4. It is also his response that it is actually his son with the Plaintiff one, John Otieno, who is inciting his mother “*to be given a piece of land for him to inherit while*” he has his own three acres given to him by the Defendant. That the dispute between him and his son was placed before the District Officer, Shiatsala Division who by letter dated 27.10.2009 ordered John Otieno to move to his land, Marama/Shibembe/496 and cease his interference with his father’s properties.
5. My appreciation of the matter is that the Defendant denies trying to evict his wife and that it is her son, Otieno that he had ordered to move out to his own land, a fact indeed confirmed by the letter dated 27.10.2009 from the District Officer, Shiatsala. However that issue is not the one that I am now dealing with. What I am dealing with is the claim by his wife that he wants to evict her from the land she currently occupies, as his first wife. He denies the claim and says that like a responsible husband he is at peace with her.
6. The above being the case, the only order that portends itself to me is that the Defendant shall be restrained from trying to evict the Plaintiff as prayed in prayer 2 of the Application dated 9.11.2009 until further orders of this suit.
7. Secondly I am referring this matter to arbitration by the District Officer Shiatsala Division. He shall file a report within 60 days and this court will thereafter give final orders in respect of the suit upon the report being filed. This order shall be extracted by the advocate for the Plaintiffs.

8. Because of the relationship between the parties, I shall make no orders as to costs.

Orders accordingly.

Delivered, dated and signed at Kakamega this 15th day of April, 2010

ISAAC LENAOLA

J U D G E