



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

CIVIL CASE NO. 33 OF 2010

MUSA INJIRA CHEKUKU ----- PLAINTIFF/APPLICANT

VERSUS

FRANCIS KHATERA CHIMASIA -- DEFENDANT/RESPONDENT

RULING

1. By his Originating Summons dated 9.3.2010, **Musa Injira Chekuku** seeks certain orders but primarily that he should be declared to have become entitled to 0.08 hectares of the parcel of land known as **Butsotso/Indangalasia/3442**, by fact of adverse possession. While admitting that the land was registered in the names of the Defendant, **Francis Khatera Chimasia**, he has lived on the said portion since August 1983. That he has established a home there and would like title thereto.
2. By a Chamber Summons under **S.3A** and **S.63 (e)** of the Civil Procedure Rules, the Defendant seeks orders to restrain the Applicant from interfering with his occupation, use and enjoyment of the disputed parcel of land until the suit is heard and determined. Further that the status quo obtaining at the commencement of the suit be maintained until the suit is determined.
3. From a perusal of the Supporting Affidavit sworn on 20.7.2010 and the Replying Affidavit sworn on 2.8.2010, the disputed parcel of land is **L. R. Butsotso/Indangalasia/307** belonging to the Defendant/Applicant. That in 1982, he sold $\frac{1}{4}$ acre to the father of the Musa Injira Chekuku but because the transaction never proceeded beyond the agreement for sale, no title was ever issued to the said Chekuku.
4. According to the Applicant, he approached the Chekuku family and he agreed to buy back the same parcel of land and the family agreed to move to **L.R. Nandi/Kamobo/211** and further agreed to give the Applicant vacant possession by 2.10.2009. That only Musa Injira Chekuku objected to the arrangement and he and the Applicant began tussling for control of the land.
5. According to **Musa Injira** aforesaid, he has two houses on the suit land and has planted napier grass, trees, bananas and fruits on the land. That he was never a party to the agreement for his family to move out of the land and if the orders sought are granted, then it will mean that his Originating Summons will be rendered nugatory and he would stand evicted from the land.
6. To my mind, and from the issues raised above, there is evidence that on account of the fact that the Applicant/Respondent's father and his family had lived on the suit land for a period that is unclear, the Applicant/Respondent may not be a stranger to the land as claimed by the Respondent/Applicant. Further, there is no evidence that he was party to the agreement of his family that they should all vacate the land that his father had purchased from the Respondent/Applicant and which the latter claimed to have repossessed.
7. On the other hand, there is the contested question whether the Applicant/Respondent had any house on the land prior to the filing of this suit and whether he has napier grass, bananas, trees and fruits which he had planted many years prior to the suit being instituted.
8. In such circumstances, the fairest order to make would be that the status quo relating to the suit land be maintained i.e. the Applicant/Respondent to remain in occupation of only $\frac{1}{4}$ acre of the land on condition

that he will not put up any new structure, or plant any new crops, save subsistence crops like maize and beans until the Originating Summons dated 9.3.2010 is heard and determined.

9. In the meantime I am shortly going to give a date for hearing of the said Summons but the Application dated 20.7.2010 is determined in the above terms.

10. Each party will bear its own costs.

11. Orders accordingly.

Delivered, dated and signed at Kakamega this 18th day of October, 2010.

ISAAC LENAOLA
J U D G E