

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL SUIT NO. 113 OF 2010

GILBERT OKAKA LUKOKO PLAINTIFF/APPLICANT

V E R S U S

GODFREY NANJIRA LUKOKO DEFENDANT/RESPONDENT

R U L I N G

1. The Applicant and Respondent are brothers and their dispute relates to the use and occupation of title no. Marama/Shitosa/611. It is common ground that the land is registered in the names of the Applicant. It is also common ground that the Respondent is in occupation thereof and in his Replying Affidavit sworn on 2.8.2010, he depones that he only occupies one acre thereof and the rest is occupied by the Plaintiff. That fact has not been denied and so prima facie I take it to be true.
2. For the above reasons and looking at the Application dated 27.7.2010, it is my considered view that the Applicant is not entitled to an injunction under ***Order XXXIX Rules 1 and 2*** of the Civil Procedure Rules. I say so also and in addition because from the Assistant Chief's letter dated 2.8.2010, the issue of trust to land has been raised and that is a matter to be investigated at the hearing. The Assistant Chief, Shisembe sub-location also confirms that the parties occupy different portions of the land which according to the Respondent is ancestral land.
3. In the event, the best order to make and while dismissing the Application dated 27.7.2010, is to order that the status quo regarding the suit land shall be maintained until the suit is heard and determined. That means that the Respondent shall remain and use the one acre of land that he presently occupies and shall only farm on it and put up no further structures on in any way interfere with the substratum thereof.
4. Each party will bear its own costs of the Application.
5. Orders accordingly.

Delivered, dated and signed at Kakamega this 16th day of November, 2010

ISAAC LENAOLA
J U D G E