

REPUBLIC OF KENYA

HIGH COURT OF KENYA AT KAKAMEGA

CIVIL CASE 84 OF 2008

GUNYAMA ANDREW GUNYAMA :::::::::::::::::::: PLAINTIFF

V E R S U S

MICHAEL LULUMBI MUSAMBAYI :::::::::::::::::::: DEFENDANT

R U L I N G

The application before me is for an interlocutory injunction, to restrain the defendant from alienating, laying claim to, trespassing onto, utilizing, developing, carrying out any works on, constructing on or in any other manner dealing with the suit property L. R. NO. **ISUKHA/SHIRERE/2725**, until the suit herein is heard and determined.

The plaintiff asserts that he is the registered owner of the suit property. He produced a copy of the title deed for the said suit property.

As the defendant did not file any replying affidavit, and in the light of the said title deed, I do find, on a prima facie basis, that the plaintiff is the registered proprietor of the suit property.

Regardless of the fact that the plaintiff was the registered owner of the suit property, the defendant is said to have trespassed thereon, in October 2008.

Again, the defendant did not deny that assertion, nor did he take any steps to justify to this court, his actions of moving onto the suit property. In the absence of any justification by the defendant, I hold, on a prima facie basis, that the defendant has no lawful authority to enter onto the suit property, or to do anything thereon..

In effect, I find and hold that the plaintiff has established a prima facie case against the defendant, and that the said case has a probability of success.

As the defendant has started constructing a structure on the suit land, without the authority of the registered proprietor, I find that if the said construction, or any other construction by the defendant is allowed to proceed, the same would alter the character of the suit property, and would therefore cause the plaintiff to suffer irreparable loss and damage.

In the event, the application before me is well merited. I therefore grant orders as prayed in the plaintiff's application dated 5th November 2008.

Dated, Signed and Delivered at Kakamega, this 5th day of February 2009

FRED A. OCHIENG

J U D G E