



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISII

Civil Case 99 of 2009

MAGIGE SAMWEL NYAMOHANGA

RIOBA MWITA MAGIGE..... PLAINTIFFS

VERSUS

LUCAS WAMBURA MONANKA DEFENDANT

RULING

The plaintiffs filed a suit seeking, *inter alia*, an order of declaration that a decree dated 16th September, 2008 by the Kuria East Land Disputes Tribunal in respect of a parcel of land known as **Nyabasi/Bosonga/28** is invalid, null and void because the Tribunal did not have jurisdiction. They also sought a declaration that the said land belongs to the second plaintiff.

The defendant filed an application seeking a temporary injunction to restrain the plaintiffs from trespassing onto the said **Nyabasi/Bosongo/28** hereinafter known as (“**the suit land**”), pending the hearing and determination of this suit.

In his affidavit, the defendant deposed that he is the registered owner of the suit land but the plaintiffs had trespassed thereon and cut down some trees. He wondered why the plaintiffs were doing so when their case was still pending. The defendant annexed to his affidavit copies of a land certificate and a certificate of an official search. The same reveal that the defendant is the registered proprietor of the suit land. There is however a restriction that is registered against the title to prohibit any transaction until a pending boundary dispute is resolved. The restriction was put on 6th January, 2006. I believe the boundary dispute is between the parties herein.

The first plaintiff filed a replying affidavit and denied that they had entered the suit land since 2006 when the defendant had made a complaint against the second plaintiff that he had set fire upon his trees. As a result, the second plaintiff was charged in a criminal case but was acquitted. He however said that the alleged trees, and which are the subject matter of this application, are growing on a disputed portion of land. He claimed that he was mandated by the area chief to work on the land pending the final settlement of the dispute but none of them was to carry out permanent developments.

Mr. Kaburi for the applicant/defendant and Mr. Okoth for the respondents/plaintiffs made brief submissions which I have taken into consideration.

The suit land is currently registered in the name of the defendant. There is also a finding by the Kuria East Land Disputes Tribunal that the land belongs to the defendant. However, the plaintiffs are questioning that finding. It would be improper for any of the parties to cut down any trees or do any other acts of trespass on the suit land. I grant the orders as prayed by the defendant.

DATED, SIGNED AND DELIVERED AT KISII THIS 19TH DAY OF NOVEMBER, 2009.

D. MUSINGA

JUDGE.

19/11/2009

Before D. Musinga, J.

Mobisa – cc

Mr. Kaburi for the Defendant/Applicant

N/A for the Plaintiff/respondent

Court: Ruling delivered in chambers.

D. MUSINGA

JUDGE.