

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Civil Suit 18 of 2006

ERNEST ODHIAMBOPLAINTIFF/APPLICANT

V E R S U S

PETER GABRIEL ONYANGODEFENDANT/RESPONDENT

R U L I N G

The Plaintiff made on 24.2.06 an application by Chamber Summons premised on Order XXXIX Rules 1, 2, and 3 of the Civil Procedure Rules and section 3A of the Civil Procedure Act, Cap.21 of the Laws of Kenya seeking an injunction to restrain the Defendant from selling or disposing, charging, alienating or in any other manner dealing with the subject matter of the suit, to wit, land title No. Bunyala/Mudembi/1735 pending the hearing of and the determination of the suit herein. The application was supported by the Applicant's affidavit sworn on 24.2.2006 and the grounds on which it was made were stated in the body of the said application which included the need to preserve the suit property pending the hearing and determination of the suit.

The application was not opposed by the Respondent who was served on 25-2-2006 but filed neither a replying affidavit nor grounds of opposition.

Mr. Gitau Kariuki, learned counsel for the Applicant, urged me to allow the application and grant the orders sought in the interest of justice as the conditions for the grant of injunction were met. He pointed out that the applicant was in possession of the suit land and that his claim was for the title to the suit land. The originating summons herein shows that the Applicant claims to have become entitled under section 38 of the Limitation of Actions Act, Cap. 22, to be registered as the proprietor of the suit land on the basis of the doctrine of adverse possession. The Applicant avers that he is fearful that the Respondent might alienate the land.

I have perused the application and considered the submissions made on behalf of the applicant by his counsel. I think it is in the interest of justice that the suit property be preserved pending the hearing and determination of the suit herein. Accordingly, I allow the application and grant injunction in terms of prayer 3 of the application. So that the ends of justice are met, I order, suo moto, pursuant to section 63 (e) of the Civil Procedure Act, Cap 21 that an inhibition order shall issue forthwith inhibiting until the suit is determined the registration of any dealing with the suit land, to wit, land title No. Bunyala/Mudembi/1735 or until further order or orders. A copy of the inhibition order shall be served on the Land Registrar of Busia District Land Registry who shall register it in the appropriate register, immediately. The costs of the application shall be costs in the cause.

Delivered, dated and signed at Kakamega this 18th day of May 2006

G. B. M. KARIUKI

J U D G E