



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**Civil Case 33 of 2006**

**PRISCA ONGOCHE**

**BULUKU .....PLAINTIFF**

**V E R S U S**

**PETER OSIEKO**

**OBOKI .....DEFENDANT**

**R U L I N G**

In the suit herein, the Plaintiff, Priscah Ongoche Buluka, alleged that she is the widow of the late Simion Buluka who died on 20/9/1998 leaving a parcel of land known as N. Wanga/Khalaba/764 part of which she put under sugarcane crop which the defendant, Peter Osieko Oboki, uprooted in 2004. The latter has made claims of ownership of the said land which have been dismissed by area Land Disputes Tribunal. The plaintiff avers that she is apprehensive that the defendant will uproot her sugarcane crop again. She has already suffered loss and prays for eviction of the defendant from the said land on which the defendant built a homestead subsequent to the dismissal of his claim by the Matungu Land Disputes Tribunal.

It was a result of this that the plaintiff filed on 17-03-2006 an application seeking an order of injunction to restrain the defendant from interfering with her farming of sugarcane on the said land until the suit is heard and determined.

In his replying affidavit sworn on 5-4-2006 in opposition to the application, the defendant averred that he owned the original land title No. N.Wanga/Khalaba/461 which measured 20.0 hectares and from which the suit land No. N/Wanga/Khalaba/764 was excised and registered in the plaintiff's name. He did not however state what led to the sub-division of the original title No. N/Wanga/Khalaba/764 and why the parcel constituting the suit land was transferred to the plaintiff who is its proprietor now. He did however state that he resides on the land but did not specify on which of the two sub-divided portions. He conceded that the original land No. N/Wanga/Khalaba/764 belonged, not to him, but to his father Osiemo Opuri.

When the application came for hearing before me, Mr. Momanyi, learned counsel for the applicant urged the court to grant the order sought in the application and contended that his client has legal title to it.

The defendant/respondent appeared in person and told the court that he relied on his replying affidavit.

I have perused the application and the replying affidavit. I have also given due consideration to the submission made by Mr. Momanyi.

Injunctions are discretionary remedies given by courts to protect legal and equitable rights. A party who seeks an interlocutory injunction is required to show that he has a prima facie case against the

defendant, that damages may not be an adequate remedy, and that unless injunction is granted irreparable damage may be sustained by him.

The plaintiff has shown that she has the legal title to the suit land and has exhibited a copy of the title deed issued to her on 3/3/76. The defendant does not deny this but obliquely concedes that the land is in fact a subdivision from land that previously belonged to his (defendant's) father's land as aforesaid.

That allusion does even remotely suggest that the defendant has any legal or equitable claim over the suit land. His allegation that he lives on it does not confer any interest or right upon him over it. Rather, it is an admission of trespass unless it can be shown that he is lawfully there either because he has the consent of the plaintiff to be on it or has some other right recognized by law. This has not been shown.

I am satisfied that the plaintiff has demonstrated that she is entitled to the order she seeks. Accordingly, I allow the application and grant the order sought in prayer (b). As regards the costs of the application, I order that the same shall be in the cause. It is so ordered.

*Dated, signed and delivered at Kakamega this 13<sup>th</sup> day of July, 2006*

G. B. M. KARIUKI

J U D G E