

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CIVIL CASE NO.169 OF 2004

PAUL B. O. O. K'OCHOLA PLAINTIFF
VERSUS
ELISHA OTIENO HAYA DEFENDANT

RULING

Applicant seeks for temporary injunction against the defendant, his agents and/or servant from entering into and remaining on land No.KANYAMKAGO/KAWERE I/1578 until the suit is hard and determined. He also asks to provide for costs.

Though the Respondent filed a replying affidavit he did not serve it upon the applicant. The application proceeded for hearing ex parte.

Applicant submitted that he is the registered proprietor of the land in dispute. The Respondent has trespassed into it and erected a structure thereon.

Without the consent of the applicant. He is also illegally cultivating on the suit land. I have carefully considered the application. The applicant both in his supporting affidavit and submissions have been very economical with facts. He did not tell the court when the Respondent specifically trespassed into the suit land. The defendant have already filed a defence and he claims to have been in the suit land since 1977.

A copy of title deed annexed to the application show that the land was registered in the applicant's name in 1993. The applicant has not stated that respondent trespassed into the suit land after it was registered in his name. There is therefore the question of when he got into the suit land if it was before the registration then the applicant should have stated so.

In his affidavit the applicant states that the respondent has erected structures in the suit land. I presume by structures "he mean houses". It therefore seems that he live in the suit land. What the applicant therefore seems to be seeking without saying so in so many words is the eviction of the Respondent from the suit land and not an order restraining him from entering into the land. He is already in the land. In the light of the defence filed I feel it would be unjust to have him evicted before the court hears their evidence. Respondent is not in occupation of the land in dispute. I therefore decline to grant the Order sought but direct the two parties to maintain the current status quo until the suit is disposed off.

Costs will be in the cause.

Dated 16th May 2005.

KABURU BAUNI
JUDGE