



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

**CIVIL CASE 42 OF 2003**

**BENSON ODIENYA NYANGOKO ..... PLAINTIFF**

**VERSUS**

**1. MOSES SHIVACHI INDECHE**

**2. ANDREW SAKWA SAKAYO**

**3. JOSHIA MUNYIKA RUSANA**

**4. JANET AYUKA..... DEFENDANTS.**

**RULING**

The applicant seeks court to issue a temporary injunction against the four respondents restraining them from trespassing upon land parcel

No.SUNA WEST/WIGA/1779 pending the hearing and determination of this suit. He submitted that he is the registered owner of the land in question and he lives there. The respondents however have trespassed into the said land and are illegally making bricks tilling and committing acts of waste. He said he has a prima facie case against them.

The Respondents opposed the application. It was deponed and submitted that parcel NO.WEST SUNA/WIGA/1779 was a creation after subdivision of land NO.WEST SUNA/WIGA/8. The applicant was registered as owner of parcel No.8 with AROKO MUNYIKA and the late RUSANA MUNYIKA who was the father of the 3<sup>rd</sup> Respondent. Unknown to the others the applicant caused the land to be sub divided into 3 portions and one portion registered in his name the other in the name of Rusana Munyika and the other in the name of Aroka Munyika. He did this fraudulent because by then Rusana was already dead and the applicant was not the administrator of his Estate.

The respondent stated that they have been living in the land for many years and have done extensive developments. Applicant is only entitled to 12 acres and they occupy the rest.

I have carefully considered the application. There is no dispute that as of now the applicant is the registered owner of land No.SUNA WEST/WIGA/1779 the suit land.

He has annexed a copy of Title deed (annexture "BON2") and a copy of Search Certificate –annexture "B.ON1." It shows the land was registered in his name on 12/7/02. The search certificate shows that this was a portion of land Plot No.8 just as deponed by the respondent. Respondents have annexed a copy of search certificate of plot No.8 just as deponed by the respondents have annexed a copy of search certificate of Plot No.8 which shows the registered owner were RUSANA MUNYIKA; AROKO MUNYIKA, and the applicant BENSON ONDINYA NYANGOKO.

Respondent submitted that the sub division by the applicant was illegal and done fraudulently. This is even pleaded in the defence and counter claim. Without wishing to pre-empt the suit this point need to be fully canvassed. The 3<sup>rd</sup> respondent has taken out letters of administration to the Estate of the late RUSINA one of those registered as owners of Plot No.8. A copy of the grant is annexed as to the affidavit and it shows that Rusana Munyika died on 16<sup>th</sup> Feb. 1989. One therefore wonders how the applicant was able to sub divide the land in the year 2002 and have one portion registered in the name of RUSANA who had died 13 years before. This is a point to be addressed during the full hearing. However the whole scenario shows that the respondent did not just trespass into the suit land.

They could have been living there even before the land was registered in the name of the applicant. To grant an injunction against them is tantamount to ordering they be evicted. This should wait until the suit is heard and finalized.

In the circumstances the application is dismissed with costs.

Dated at Kisii this 24<sup>th</sup> November 2004

**KABURU BAUNI**

**JUDGE**

**24/11/04**

Mr. Soire for Respondent.

Appellant in person.

**KABURU BAUNI**

**JUDGE**