



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC CASE NO. 288 OF 2016**

**NYAMITA DULO GERSHON.....PLAINTIFF/APPLICANT**

**VERSUS**

**SHEM ODEGI TUJU.....DEFENDANT/RESPONDENT**

**RULING**

Nyamita Dulo Gershon has come to court against Shem Odegi Tuju with an application for an order of temporary injunction restraining Sem Odegu Tuju from trespassing into, erecting illegal structures or alienating, disposing off or otherwise interfering with the Plaintiff's ownership quiet and peaceful possession and occupation and enjoyment of the suit plot or parcels of land known as L.R. NOS KISUMU GOD ABUORO/295 and KISUMU GOD ABUORO 331 within Kisumu County pending hearing of the suit.

The Plaintiff also prays that the defendant be stopped from threatening in any way the plaintiff with evictions. That the Police and County Commissioner Nyando sub-County to assist. That the court to declare the Plaintiff a legal owner of a portion of the suit land by way of adverse possession.

The application is based on grounds that the Plaintiff/applicant occupies a portion of the said suit lands which belonged to his late father. The transfer of the suit lands was done within is knowledge or notice by the transferor.

In the Supporting Affidavit the Plaintiff states that the parcels of land belonged to his father who passed away on 7/5/2003. He has been in occupation the land since 2007. He was informed that the land was sold to one Shem Odegu Tuju by his late father information he does not believe to be true. He states that the transfer was irregular null and void without letter of administration interstate being obtained.

I have considered the application, supporting affidavit, and replying affidavit and do find that the plaintiff is in possession of a portion of the suit land and therefore has established a prima facie case with a chance of success. Moreover, if evicted he is likely to suffer irreparable loss. The balance of convenience militates on granting an order to preserve the subject matter. I do grant a temporary injunction restraining the Defendant from evicting him from the suit parcels until the suit is heard and determined. Costs in the cause. The matter is fast-tracked for hearing. Parties to comply with Civil Procedure Rules 2010 within 30 days.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 1<sup>ST</sup> DAY OF OCTOBER, 2021**

**ANTONY OMBWAYO**

**JUDGE**

*This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.*

**ANTONY OMBWAYO**

**JUDGE**