

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CASE NO. 13 OF 2016

ISAAC NGUBO OSINDI.....PLAINTIFF/ APPLICANT

-VERSUS-

GICHERE NYABANDO.....1ST DEFENDANT/RESPONDENT

CHRISTOPHER MAUBI

OKINDO NYABANDO.....2ND DIFENDANT/RESPONDENT

RULING

INTRODUCTION

1. On 18th November, 2019, the Plaintiff filed a Notice of Motion seeking an interlocutory injunction restraining the Respondents by themselves or their agents and/or servants from interfering with his quiet possession and enjoyment of a portion of a parcel of land known as CENTRAL KITUTU/MWAMWANA/557 pending the hearing and determination of the main suit.
2. The application is based on the grounds set out on the face of the Notice of Motion and the Applicant's Supporting Affidavit sworn on the 13th November 2019, in which he averred that his father Osindi Nyacheo owned the portion of the suit property which he had been using since 1953. He deponed that the Defendants/Respondents did not have any proprietary interest over the suit property that defeat his rights to the suit property.
3. He further deponed that vide a letter dated 14th November, 2018 the Kisii County Land Registrar revoked all titles that had originated from the suit property which were 2227, 2228, 2229, 2230, 2231, 2232, 2233, 3409, 3418 and 3419 and reverted the title back to the original title, CENTRAL KITUTU/MWAMANWA/557.
4. The Applicant also averred that the Defendants had unlawfully and without any colour of right destroyed his properties with the intention of disposing his portion of the suit property to third parties without his consent.
5. However, before considering the application on merit, upon perusal of the file I have noted that a similar application dated 20th February 2017 was filed by the Applicant in which he sought similar orders.
6. The said Application came up for hearing on 2nd May, 2017 before this court. The court after hearing both parties and after considering that the Defendants were not objecting to the grant of the temporary injunction, directed that the parties maintain and observe the prevailing status quo wherein there would be no sale of the suit property and no felling of trees until the suit is heard.
7. In view of the foregoing, I am of the view that this application is superfluous as the orders of status quo are still in place. The parties ought to focus on having the case set down for hearing as ordered by the court.
8. The upshot is that the application is an abuse of the court process and the same is hereby dismissed with costs to the Defendants/Respondents.

DATED, SIGNED AND DELIVERED AT KISII THIS 27TH DAY OF OCTOBER, 2021.

.....

J.M ONYANGO

JUDGE