



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUSIA**

**CIVIL CASE NO. 66 OF 2019**

**ANDERA OMANYO EKULO .....PLAINTIFF**

**VERSUS**

**INNOCENT MASIGA MAKOKHA .....DEFENDANT**

**R U L I N G**

1. For determination is the notice of motion application dated 26<sup>th</sup> September 2019 brought under the provisions of Order 40 Rule 1 and Order 50 Rule 1 of the Civil Procedure Rules. The plaintiff/applicant prays for Orders that;

**a) Spent**

**b) An order of inhibition be issued against the defendant in accordance with Section 68 of the Land Registration Act, 2012 restraining the transfer, sub-division, disposition or charging of L.R No. SOUTH TESO/ANGOROMO/7713 until the hearing and final determination of this suit.**

**c) Costs of the application be provided for.**

2. The application is supported by the affidavit of Andera Omanyo Ekulo the applicant. He deposed that he is a paternal uncle of the respondent. That the respondent's father sold his share of ancestral land in Angolot and went and settled in Angorom. Mr. Andera continued that after the death of his brother, he supported the Respondent who later came to live with him because this was near his place of work at the customs.

3. The applicant deposed further that he allowed the respondent to build 3 rental rooms on the suit land. That the respondent requested him for the title deed under false pretense that he was to use the same as security to obtain a loan from family bank. Instead of using the title as security, the respondent went ahead and registered the title in his name. The suit is seeking the cancellation of the registration of the respondent.

4. The respondent filed grounds of opposition and replying affidavit to contest the orders. He deposed that the plaintiff sold to him the said parcel of land and he proceeded to annex a copy of the sale agreement executed between them. He denied that he got the land fraudulently. The respondent deposed that he cannot be enjoined from using his land. He urged the Court to dismiss the application with costs.

5. Ms Ogoti learned counsel for the applicant submitted that the purpose of seeking the inhibition is to preserve the subject matter so as not to render this suit nugatory. That the defendant will not be prejudiced if the orders are issued. In opposing the application, Mr. Okutta counsel for the respondent submitted that the Court cannot grant the reliefs sought under Order 40. That the respondent properly acquired the land from the applicant and so he should not be restrained from using the land.

6. The orders being sought are to restrain the defendant from transferring, sub-dividing, disposing or charging L.R No. South Teso/Angoromo/7713 until the hearing and final determination of the suit. The applicant is accusing the defendant of registering the title in his name fraudulently. The purpose of the order is to prevent the defendant from having the title to the suit land change hands and or change status. The applicant has not pleaded that he is stopping the defendant from physical use of the land.

7. The respondent submitted that the orders cannot issue in the manner they are couched. However, this is a technical issue which can be cured under Article 159(2) of the Constitution. The orders of inhibition sought in my view will not in any way prejudice the respondent. It is in the interest of justice that the title to the suit property be preserved. Therefore, I find merit in the motion and allow it in terms of **prayer (2)** with costs in the Cause.

**Dated, signed and delivered at BUSIA this 29<sup>th</sup> day of April, 2020.**

**A. OMOLLO**

**JUDGE**