



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 88 OF 2015.

ISAIAH OMONDOI DHIAMBO.....PLAINTIFF

VERSUS

1. ANJELINE ANYANGO AKINYI

2. JOTHAM GODFREY MULAMBA.

3. MILTON H. A. OKELLO.....DEFENDANTS.

RULING.

1. The application under consideration is an amended Notice of Motion dated 14th October, 2015 and filed on 15th October, 2015. The application is brought under Sections 3, 3a of Civil Procedure Act (cap 21) and Order 40 Rules, 1, 2 and 3 of Civil Procedure Rules.

The inherent powers of court are also invoked.

2. Essentially, the plaintiff - **ISAIAH OMONDI ODHIAMBO** - is seeking a restraining order in terms of prayer 2 against the defendants- **ANJELINE ANYANGO AKINYI, JOTHAM GODFREY MULAMBA** and **MILTON OKELLO**. The restraining order is sought regarding land parcels Nos. MARACHI/BUMALA/2744, 2745 and 2746.

It is necessary to spell out the prayer as formulated in the application:

Prayer 2: That there be temporary orders of injunction restraining respondent/defendant from disposing off parts of land parcels MARACHI/BUMALA/2744, 2745, and 2746 pending hearing and determination of this application.

3. It is crucial that the prayer as formulated is meant to run **“PENDING HEARING AND DETERMINATION OF THIS APPLICATION”** I will revert to this later

4. The defendants responded to the application vide replying affidavit filed on 22/1/2016. The application was thereafter heard interpartes on 26th January, 2016.

5. I have considered the application, the responses made, and the arguments presented during hearing. I do not consider it necessary to delve into the merits and demerits of the application because the application as filed is not well thought through and is fundamentally and fatally defective. To explain, I now revert to the prayer as formulated. As can be seen, it is meant to last only for the duration or determination if you like, of the application.

6. This ruling is the determination of the application. Once the ruling is delivered, the duration of the application is over. What purpose then will the order serve if it is only meant to last until the application is determined? It is usual in these kinds of application to have such prayer formulated to run until the suit is determined.

That enables the court to determine the application and, where deserved, issue an order to last until the suit is determined. The plaintiff omitted or failed to make such a prayer.

7. As things stand, the prayer sought by the plaintiff is helpful to him or anybody else. And that is why it is a futile exercise to delve into the other contents of the application.

8. It is apparent that the plaintiff is not represented. But that does not absolve him from the responsibility of presenting a competent application. It was upon him to draw an application that would serve his purposes well if granted. He failed to do so.

9. The upshot is that the application herein is a non-starter and is hereby dismissed with costs.

A.K.KANIARU,

JUDGE.

DATED AND DELIVERED ON 9TH DAY OF MARCH, 2016.

IN THE PRESENCE OF;

PLAINTIF.....

1ST DEFENDANT.....

2ND DEFENDANT.....

3RD DEFENDANT.....

COUNSEL.....

JUDGE