



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**ELC. NO. 09 OF 2012.**

**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CAP 22**

**OF LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF 2012**

**AND**

**IN THE MATTER OF A CLAIM FOR ADVERSE POSSESSION**

**BETWEEN**

**DAVID OPRONG GEORGE.....APPLICANT**

**-VERSUS-**

**NORAH ADIAMBO OMUSE (As legal**

**Representative of BASIL PAMBA OKOMULI alias**

**OMUSE OPAMA IKOMULI (DECEASED)..... RESPONDENT.**

**R U L I N G.**

1. **DAVID OPRONG GEORGE**, The Applicant, through his counsel filed the Notice of Motion under certificate of urgency dated 12<sup>th</sup> November, 2014 for inhibition and temporary injunction on land parcel South Teso/Apokor/1350. The application is based on five grounds on the face of it and Applicant's supporting affidavit sworn on 28<sup>th</sup> October, 2014.
2. The application is opposed by Norah Adhiambo Amuse, the Respondent, who filed a replying affidavit, through her counsel sworn on 5<sup>th</sup> May, 2015.
3. The main issue for determination is whether the Applicant has presented facts to prima facie show that the Respondent intends to dispose off the suit land and if so, whether the orders sought should be issued.
4. The application came up for hearing on 6<sup>th</sup> May, 2015. Mr. Onsongo and MS. Imwene for the

Applicant and Respondent respectively presented their submissions. The court has carefully considered the grounds on the application, the counsel 's submissions, the supporting and replying affidavits and find as follows;

- a) That the suit land South Teso/Apokor/1350 is a subdivision of South Teso/Apokor/1318 as confirmed in the copy of the register filed with the originating summons dated 24<sup>th</sup> October, 2012.
- b) That the suit land is registered in the names of Omuse Opama Ikomuli since 17<sup>th</sup> January, 1986.
- c) That the said Omuse Opama Ikomuli alias Basil Pamba Ikomoli died on 1<sup>st</sup> July, 2002 and the Respondent herein was appointed the administratrix of the deceased's estate on 26<sup>th</sup> July, 2011 in Busia H.C. Succession Cause No. 182 of 2011 as confirmed by the copy of the grant filed with the said originating summons.
- d) That the appointment of the Respondent as the administratrix of her deceased father's estate has not been challenged and between the Applicant and the Respondent, the latter prima facie has a better claim than the former over the suit land and an injunction cannot issue against her at this stage.
- e) That the Applicant has not presented any tangible facts to support his claim that the Respondent intends to alienate the suit land. The court notes that the title to the suit land has been restricted by the Land Registrar through the Applicant's application. The Land Registrar can only lift the inhibition in accordance with section 73 of the Land Registration Act 2012 which requires the one who filed the caution to be involved. There is nothing to show that the due process would not be followed in the event the restriction filed is to be lifted and there is no need to issue an inhibition order.

5. That having found as above, the court finds no merit in the application under certificate of urgency dated 12<sup>th</sup> November, 2014 and the application is dismissed with costs.

It is so ordered.

**S.M. KIBUNJA,**

**JUDGE.**

**DATED AND DELIVERED ON ....11<sup>TH</sup>....DAY OF JUNE, 2015.**

**IN THE PRESENCE OF;**

**APPLICANT..... PRESENT.....**

**RESPONDENT.....PRESENT.....**

**COUNSEL.....MR. IPAPU FOR ONSONGO FOR APPLICANT.....**