

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

LAND AND ENVIRONMENT NO; 228 OF 2013

IBRAHIM JUMA MUKAMO.....PLAINTIFF/APPLICANT

VERSUS

KEYA MUTINYI WATAKO.....1ST RESPONDENT

ISMAEL TETE KEYA.....2ND RESPONDENT

RULING

The application dated 22/10/2013 is seeking an order of injunction to restrain the defendants from dealing with plot No; **NORTH/WANGA/KHALABA/645** or the subsequent sub-divisions being plot Nos. **1145 & 1146**. The applicant is also seeking a restriction to be registered against the suit properties. The application is supported by the applicant's affidavit sworn on the same date. The respondents filed a replying affidavit sworn by the 2nd respondent on the 12/11/2013. Parties relied on the applications and the replying affidavit.

The applicants position is that he was the original owner of plot No; **645** measuring 47 ½ acres. He sold 32 acres for consideration of Ksh 16,000/= in 1972 to the 1st respondent. However the entire land was registered in the names of the 1st respondent who sub-divided it into plots No. 1145 and 1146. It is the applicant's submissions that the 1st respondent only paid Ksh 11,000/= and remained with a balance of Ksh 5,000/=. He is seeking to restrain the respondents from dealing with the suit property.

On their part the respondents maintain that they are the registered owners of plot No. **1145** and **1146**. The 1st respondent bought the entire original plot No. **645** and was transferred to him on 27/8/1976. It is also contended that the entire purchased price was paid. The original title was closed and the land was sub-divided. They have no intention of selling the land. The applicant went to the **Mumias Land Disputes Tribunal** and those proceedings were quashed through **Kakamega High Msc Appl. 58 of 2011**.

The pleadings herein show that the applicant was the original owner of the suit land. A copy of the green card shows that the land was transferred to the 1st respondent on 27/8/1976. The title was closed on 5/10/1989. Currently the 1st respondent is registered as the owner of plot No. 1145 measuring 4.4 Hectares while the 2nd respondent is registered as the owner of Plot No; 1146. There is no sale agreement annexed to show that indeed what was sold was 32 acres and not 47 ½ acres. The dispute before the **Mumias Land Disputes Tribunal** was filed in 2011, vide case No. 11 of 2011. It is not clear why the applicant kept quiet from 1976 upto 2011. There is no other document such as application for consent to the Land control board that can show that what was sold was only 32 acres. At this preliminary stage I do find that granting the orders being sought would prejudice the respondents who are the registered owners. I do find that no irreparable damage would befall the applicant if the orders are not granted. The current status quo has been in existence since 1976 and there is no urgency that requires the orders to be granted.

In the end I do find that the application dated 22/10/2012 lacks merit and the same is dismissed with no orders as to costs.

Dated, signed and Delivered at Kakamega this 10th day of July 2014.

SAID J. CHITEMBWE

JUDGE