



IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 68 OF 2014.

LAWRENCE ISOGOLI KARANI.....PLAINTIFF

VERSUS

GEOFFREY N. OMODING.....DEFENDANT.

R U L I N G.

LAWRENCE ISOGOLI KARANI hereinafter referred to as the Applicant through M/S. Obwoye Onsongo & company advocates filed the notice of Motion dated 1st April, 2014 for a temporary injunction against Geoffrey N. Omoding, hereinafter referred to as the Respondent over land parcel south Teso/Amukura/2570 pending the hearing and determination of this suit.

The application is based on five grounds on the face of the application, the supporting and further supporting affidavits by Lawrence Isogoli Karani sworn on 1st April, 2014 and 19th May, 2014 respectively.

The Respondent opposed the application through the grounds of opposition dated 7th April, 2014 and replying affidavit of Geoffrey N. Omoding sworn on 5th May, 2014 filed through M/S Ashioya & company advocates.

During the hearing, Mr. Onsongo and Mr. Ashioya appeared for the Applicant and Respondent and submitted on behalf of their respective clients. I have carefully considered the grounds on the face of the application, the contents of the grounds of oppositions, submissions by both counsel, supporting, further supporting and replying affidavits and find as follows;-

1. That the Applicant is the registered proprietor of the suit land South Teso/Amukura/2570 having been so registered on 18th November, 1993 and title deed issued on the same date.
2. That the said suit land has an acreage of 1.20 hectares as indicated in the copy of the title deed annexed to the supporting affidavit.
3. That the Respondent's interest is not on the suit land but on South Teso/Amukura/2569 belonging to Rophinah Imo Amai under a land sale agreement dated 26th May, 2003, a copy of which is attached to the replying affidavit.
4. That though the Respondent has availed two letters dated 15th June, 1994 and 10th February, 2014 that show the Land Registrars office has been dealing with a complaint relating to the size of the land the Applicant was to get under the suit land, there is nothing to show that the Applicant's title to the 1.20 hectares has been cancelled, revoked or reduced to a smaller portion.
5. That the certificate of title is held as conclusive evidence of proprietorship as provided for under Section 26 of the Land Registration Act which states:

“26. (1) The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party’ or

(b) whether the certificate of title has been acquired illegally. Unprocedurally or through a corrupt scheme.”

The factors contained in (a) and (b) can only be established through tendering of evidence and there is no such evidence tendered so far. In any case the party to challenge the Applicant’s title to the 1.20 hectare land comprising of South Teso/Amukura/2570 from the available material may logically be the Land Registrar who issued the title or the person from whom the Applicant acquired the Land from or such persons legal representative.

5. That from the foregoing, and considering one of the Applicant’s prayer in the plaint dated 1st April, 2014 is for a permanent injunction, I find the Applicant has satisfied the court that on the materials so far presented he has a prima facie case with a high chance of success as against the Respondent in terms of the principles set out in the celebrated case of **Giella –vs- Casman Brown**.

That having found as above, I find the Applicant’s application dated 1st April, 2014 has merit and is granted in the following terms:

- a. That an order of temporary injunction is hereby issued restraining the Respondent and all those claiming under him from trespassing, tilling, weeding and or in any other manner using land parcel South Teso/Amukura/2570 to which the Applicant is the registered proprietor pending the hearing and final determination of this suit.
- b. That the costs will abide the outcome of the main suit.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 15th .DAY OF JULY, 2014.

IN THE PRESENCE OF;

Mr. Ashioya for Defendant, Respondent only.