

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL CASE NO: 39 OF 2008

CHARLES LUGONDO NGALWA.....PLAINTIFF

VERSUS

MARK IMBALU MUSIKHU.....DEFENDANT

RULING

The application dated 18/2/2014 seeks to restrain the defendant from sub-dividing plot number **KAKAMEGA/CHEPTULU/85** and **87** respectively. The applicant also seeks an order restraining the Vihiga Land Registrar from issuing title deeds in respect of the expected sub-divisions. The application is supported by the same date. The defendant filed a replying affidavit sworn on 5th June 2014.

Counsels for both parties relied on their respective pleadings. The pleadings show that the applicant is the registered owner of plot number **KAKAMEGA/CHEPTULU/88** while the defendant owns plot number 85 and 87. Parties had a boundary dispute before the Vihiga Land Disputes Tribunal. The Tribunal held that the existing boundary be maintained and this was contrary to the plaintiff's expectation.

Since each of the parties own different titles, I do find that the court cannot *inunct* the defendant from dealing with this property. The plaintiff's claim can be dealt with fully and if it is found that there is need to adjust the property then such an issue can be dealt with at that stage. This is a boundary dispute and the land Registrar can deal with it. The plaintiff cal also engage private surveyor who can show him his boundary.

I do find that there is no prima facie case with a probability of success established by the plaintiff. I do not see any irreparable damage that would befall the plaintiff. I do find that the application lacks merit and the same is dismissed with costs.

Dated, delivered and signed at Kakamega this 16th day of September 2014.

SAID J. CHITEMBWE

JUDGE