



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

HCC NO. 82 OF 2010

KENNEDY KHWATENGE WANYONYI

(suing as the Personal Representative of the estate of

SIMEON WANYONYI KHWATENGE - DECEASED PLAINTIFF

VERSUS

GABRIEL LUSAMAMBA1ST DEFENDANT

JAMES MAFURA 2ND DEFENDANT

RULING

This is an application for temporary injunction brought by the applicant seeking to restrain the defendants and their agents from tilling, ploughing, cutting down crops, planting crops or harvesting crops or acting in any other manner that is likely to interfere with the applicant's occupation and use of L.R. No. KAKAMEGA/MOI'S BRIDGE/1160, 1162, 1161, 1163, 1164 AND 1165 pending the hearing and determination of this suit.

The application is premised on the grounds on the face of it and the supporting affidavit. The applicant deposes that the defendants have been thorns in his life as they have prevented him and his siblings from peacefully occupying and using the suit lands. Further that the defendant put up structures on 26th March 2010 after the death of their father.

More recently, on 17th March the 1st defendant with four others started construction on the suit land armed with crude weapons.

The application is opposed by the defendants who filed their replying affidavits. Both defendants have annexed an order issued by D. Onyancha J on 26th October 2010 which required status quo to be maintained. The 1st defendant avers that the plaintiff caused him to be arrested on 18.3.13 whereupon he was forced to sign annexure **KKW 3 (e)** (a letter committing to pay the applicant Kshs. 2000/=).

The 2nd defendant accused the applicant to be the one inter-meddling with the estate of the deceased. He added this application is an abuse of the court process, frivolous and vexatious.

I have read the order annexed issued by my learned brother D.A. Onyancha on 26th October 2010 regarding the maintenance of the status quo. Therefore by the applicant's own admission in paragraph 6 of his supporting affidavit, the defendants had already constructed structures on the suit land. He alleges

the defendants ***“day by day encroached and penetrate on to the suit lands.”*** It is not clear why the succession matter has not been pursued to the end from the time the order was issued. The applicant did not specify which parcels (titles) the defendant occupied which was part of the status quo to be maintained and which parcels (titles) they were using before this order was issued. He is only making a blanket judgment and general use of the land.

Secondly the order on status quo did not mention any thing on stopping either of the parties from tilling, ploughing or planting of the land. Nothing would have been easier for the applicant to say for instance, L.R. 1161 was in our use when the order was issued and on 17.3.13 the defendants or their agents threatened us from using it.

In the absence of such clear explanation, I find the application as not meeting the principles set out in the case of **Giella Vs. Cassman Brown.**

The applicant has also failed to show that he will suffer irreparable loss.

I would therefore echo the express orders of the Judge that in Bungoma HC

P & A 466 of 2009 that

“The status quo prevailing on the deceased's estate at the moment be maintained.” The application is thus dismissed with costs to the defendants.

RULING DELIVERED AND DATED this 8th day of October 2013.

A. OMOLLO

JUDGE.