

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

ORIGINATING SUMMONS 97 OF 2004

IN THE OF REGISTERED LAND ACT CAP 300 LAWS OF KENYA

AGGREY MALALA OUMA.....PLAINTIFF/
RESPONDENT

~VRS~

DICKSON OKUMU WERE.....DEFENDANT/
APPLICANT

RULING

The Plaintiff filed this suit by way of originating summons on 11/8/2004 claiming land parcel no.N. Wanga/Lunganyiro/844 which is registered in the name of the Defendant. He swore that the suit land belonged to his father Ouma Awori who died intestate in 1968. Before he died and while sick and bed-ridden, it was stated, the Defendant got him to transfer the land to him (the Defendant). The Defendant then immediately moved to go and stay in Kitale. The Plaintiff was unaware of the transfer until 1993 when he wanted to take out letters of administration in respect of the estate of his father. He checked the lands registry and found the suit land was in the name of the Defendant. There was a subsequent dispute between the two over the suit land which eventually led to this suit. The Plaintiff has always lived on this land. The suit was filed for the determination of several issues, including the questions whether or not the Plaintiff is the sole beneficiary of the suit land by virtue of being the only son of the deceased and whether he has become entitled to the suit land by adverse possession.

The Respondent's answer to the suit was that this is his land in respect of which he was validly registered after he was given the same by the deceased who had adopted him.

The present application was dated 16/5/2012 and filed on the same date. It was brought by the Defendant under Order 40 rule 1 (a), (b), 2 (1) and 2 of the Civil Procedure Rules and sections 3, 3A and 63 (e) of the Civil Procedure Act seeking that the Plaintiff and all those acting under him be restrained by temporary injunction from selling, disposing of, ploughing or in any other manner interfering with the suit property pending the hearing and determination of the suit. It was alleged that the Plaintiff was ploughing the suit property and intended to sell it.

The Plaintiff swore a response denying the averments by the Defendant.

The basis upon which an applicant can be granted a temporary relief of an injunction is if he has a *prima facie* case that will probably succeed (**Giella v. Cassman Brown & Co. Ltd [1973] EA 358**). The Defendant has no suit against the Plaintiff. He has not filed any counterclaim to the originating summons. He has not sought an injunction as a final relief. This application is consequently misconceived and is dismissed with costs.

Dated, signed and delivered at Bungoma this 4th day of July, 2012.

A. O. MUCHELULE
JUDGE