

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

Civil Suit 98 of 2012

JOSECK SHIKHOLE PLAINTIFF/APPLICANT

VERSUS

BERNARD M. MANYASI 1ST DEFENDANT/RESPONDENT

KONDI MANYASI 2ND DEFENDANT/RESPONDENT

RULING

The application dated 16.5.12 seeks an order of temporary injunction restraining the defendants, their agents, heirs and/or assigns from alienating, tilling and/or in any other manner interfering with the plaintiffs use and occupation of land parcel No. BUTSOTSO/ESUMEYIA/4167 pending the hearing of the main suit.

The application is supported by the affidavit of the plaintiff/applicant JOSECK SHIKHOLE sworn on 16.5.12. According to the said affidavit, the plaintiff is the registered owner of the land parcel, NO. BUTSOTSO/ESUMEYIA/4167 (hereinafter suit land). The title Deed has been exhibited (annexture "JS1"). That the Respondents have their own land but have been interfering with the applicant's use of the suit land.

The application is opposed to as per the replying affidavit sworn by BERNARD MOI MANYASI sworn on 9.6.12.

The Respondents contention is that they have been in occupation of the suit land from the time they were born. That the suit land is a sub-division of land parcel NO. BUTSOTSO/ESUMEYIA/702 which is their ancestral land. That the applicant has no good title to the land and that the applicant's title is a subject of Kakamega HC/Succ. 23/02.

It is not in dispute that the suit land is registered in the applicant's name. It is also not in dispute that the Respondents are in occupation of the land. Indeed the final prayer in the plaint is for eviction orders.

According to the Respondents, they have been in occupation of the land since they were born. This is not challenged by the applicant. Issuing restraining orders at this stage would amount to evicting the Respondents before the case has been heard.

The balance of convenience is in the Respondents favour since they are the ones in occupation of the land.

The application is therefore dismissed with costs in the cause.

Delivered, dated and signed at Kakamega in open court this 5th day of July, 2012

B. THURANIRA JADEN
J U D G E