



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT 54 OF 2012

MARTIN OTIENO

ARANGO.....PLAINTIFF

VERSUS

JACOB OMONDI

APIDA.....DEFENDANT

RULING

The Application dated 21st March 2012 by the plaintiff / applicants prays for temporary orders of injunction to restrain the defendant or his agents from dealing with land parcel number **Kisumu / Kochieng / 3071** pending the hearing and determination of this suit. It is supported by the plaintiff / applicant affidavit sworn on the same day.

The plaintiff / applicant has argued that he is the registered propriety of the suit property. He has attached a copy of the title deed showing his proprietorship as from 12th August 2011. The applicant has also exemplified several correspondence from the Senior Chief East Kochieng location demanding that he shall authorize the defendant to enter the suit property.

The District land Registrar has equally demanded the surrender of the Title Deed by the applicant. This was vide his letter dated 2nd March 2012.

The respondent has filed his replying affidavit dated 27th June 2012. According to him the applicant has no claim over the suit land having obtained the registration before getting letters of administration.

However of great significance is his assertion in paragraph 9 of his affidavit that there is a problem with the map and that the parcels number **3070** and **3071** are not talling on the ground. He has gone ahead to attach copies of maps and minutes of a land dispute tribunal case.

My overall assessment of the applicant's application is that this is a case that ought to go to a full trial. There are serious allegations and counter allegation made by the parties herein against each other.

The proper position is to maintain the status quo. The plaintiff / applicant should not be compelled by the Chief or the land registrar to surrender his title or in any other way as the Chiefs letter suggest, permitting third parties to invade the applicant's parcel of land.

I shall therefore allow the application dated 21st March 2012 for the reasons stated above and further that the applicant has shown a prima facie case.

The applicant shall have the costs of this application.

Dated, signed and delivered at Kisumu this 13th of July 2012

H. K. CHEMITEI

JUDGE

In the presence of:

Onyango Advocate for Applicant / Plaintiff

Lore for Kowino Advocate for Defendant

HKC/aao