

REPUBLIC OF KENYA

Obilo v Angila

High Court, at Kisii May 14, 1985

Masime J

Civil Case No 51 of 1985

May 14, 1985, Masime J delivered the following Ruling.

This is an application by way of chamber summons for an order to restrain the second respondent South Nyanza Company Limited from realizing the proceeds of some 56.77 tones of sugar cane delivered by the 1st respondent Silvanus Omolo Angila out of land title number Kamagambo/Kanyawanga/164; there is also a prayer for an order for the costs of the application to be provided for.

The application is supported by the affidavit of the applicant, Salmon Odhiambo Obilo and there is a replying affidavit. In his plaint filed into court on April 25, 1985, the applicant sets out the history of his acquisition of the land in dispute: he states that he purchased land from one Nicholas Mwangi Irungu in July 1983; he has annexed a photo copy of the land certificate in respect of the land and it shows that on July 27, 1983 the land was transferred to him in consideration of the sum of Kshs, 3,000 on that same date the land certificate was issued to the applicant. He has also annexed a copy of a letter of consent issued by the D O Central Division Rongo showing that there was consent to the transaction which was approved on July 27, 1983. It is alleged that then after the defendant forcefully and without any justifiable cause entered and cultivated the disputed land. Despite requests from applicant to the defendant to desist from his illegal activities on the land the defendant has continued to do so and that he has recently harvested a crop of sugar cane earlier referred to. The defendant has for his part filed a replying affidavit in which he denies knowledge of the applicant; however, he admits that he had a transaction for the transfer of the land in dispute to the applicant predecessor in title and that the transaction occurred in 1979; if this was so then in effect the respondent is saying that he had no interest in the disputed land as at the time the applicant claims to have purchased it, indeed, the has alleged an arrangement that there was between him and the applicants predecessor in title was verbal and in the result such an agreement, if any, was void and of no effect. Both parties are not represented and although the application now before me should be one for attachment before judgment I will treat it as such. In the result I order that the second respondent South Nyanza Sugar Company should not release the proceeds of the cane until the hearing and determination of the suit, I order that the costs of both the second respondent and the applicant should be paid by the first respondent.