



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA IN BUSIA

ENVIRONMENT AND LAND COURT

ELC NO. 162 OF 2016

JANE NANGUNDA KABWERE.....APPLICANT

VERSUS

BENARD O. OWORI.....RESPONDENT

RULING

1. The application under consideration is a Notice of Motion filed here on 28/11/2016 and dated the same. It was brought under Sections 1A, 1B, and 3A of the Civil Procedure Act (cap 21), Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules as read together with what is stated to be “Schedule 40, 64 and 159 of the Constitution of Kenya, 2010” (sic). The Applicant – **JANE NANGUNDA KABWERE** – is the Plaintiff in the suit herein while the Respondent – **BENARD O. OWORI** – is the Defendant. As filed, the application has six (6) prayers but some of them – prayers 1, 2, 4 and 5 – are now moot, having been for consideration at an earlier stage.

2. The prayers for consideration are now are 3 and 6, which were formulated thus:

Prayer 3:that this honourable court do issue an order of permanent injunction against the Defendant/Respondent by itself, its servants, workers, agents, 3rd parties, from selling disposing off, alienating or transferring LR. No. BUKHAYO/BUGENGI/10010 and LR No. BUKHAYO/BUGENGI/11588 from the Plaintiff’s ownership pending the hearing and determination of the main suit.

Prayer 6:That the costs of this application be provided for.

3. The Applicant’s complaint is that the Respondent has invaded the two parcels of land and has started putting them to his own use.

4. The Respondent opposed the application in two ways: vide grounds of opposition filed on 22/2/2018 and by a replying affidavit filed on 26/3/2018. He denied what is alleged against him.

5. The application was canvassed by way of written submissions. The Applicant’s submissions were filed on 20/3/2018. The Applicant emphasized the importance of her rights as registered owner and urged the court to grant a restraining order to ensure the rights are not violated.

6. The Respondent’s submissions were filed on 26/3/2018. After pointing out the principles necessary for grant of temporary injunctive orders, it was submitted that **“the Defendant not being the registered proprietor of L.R. No. BUKHAYO/BUGENGI/10010 and 11588 is incapable of selling, disposing off, alienating the said parcels of land and consequently the application is frivolous, vexatious, and an abuse of the court process”**.

7. I have considered the application, the responses made, and rival submissions. In the suit, the Applicant complains of invasion and illegal use of his land. This is the same complaint made in the application. When one looks at the prayer for injunction sought, one notices that it is at variance with the complaint made. The prayer is seeking to restrain sale, alienation, disposal or transfer of the land.

8.The Respondent’s counsel is right when he wonders in the submissions how the Applicant would sell, alienate, dispose, or transfer parcels of land to which he has no title. It is clear that the application is not well thought through. It is indeed curious that the prayer sought is not seeking to restrain invasion and/or illegal use of the parcels of land. The Respondent obviously lacks capacity to sell, alienate, dispose of or even transfer the land.

9.It is in light of the foregoing that I find the application unmeritorious. I hereby dismiss it with costs.

Dated, signed and delivered at Busia this 9th day of October, 2018.

A.K. KANIARU

JUDGE

In the Presence of:

Applicant:

Respondent:

Counsel of Applicant:

Respondent: