



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

ENVIRONMENT AND LAND COURT

ELC CASE NO. 438 OF 2017

CHANDOH OAKLEY MOSES.....PLAINTIFF

-versus-

BENIGNO ODIWUOR.....DEFENDANT

RULING

1. A Notice of Motion dated 11/5/2017 by the plaintiff/applicant represented by Kwanga Mboya advocates is coming up for hearing today. In the Notice of Motion the orders sought are :-

- a) **THAT** this application be certified as urgent and same be dispensed with in the first instance.
- b) **THAT** a temporary order of injunction do issue to the respondent/Defendant, restraining him his servants, agents and/or otherwise howsoever from trespassing, wasting alienating, disposing off or in any way interfering with land parcel **No. SUNA WEST/WASWETA II/3012** pending the hearing of this application.
- c) **THAT** a temporary order of injunction do issue to the respondent, restraining him, his servants, agents and/or otherwise howsoever from trespassing, wasting, alienating, disposing off or in any way interfering with land parcel no. **SUNA WEST/WASWETA 11/3012**, pending hearing and determination of the suit herein.
- d) **THAT** the costs of this application be provided for.

2. There is a Preliminary Objection dated 29/9/2017 by Mr. Kisia counsel for the Defendant/Respondent. The grounds of the preliminary objection are :-

- 1) **THAT** the ownership of the suit premise is a subject for determination hence the application is premature.
- 2) **THAT** the applicant has not raised the legal threshold for grant of injunction.
- 3) **THAT** the respondent has registered interest in the suit premises.
- 4) **THAT** the application is fatally defective.

3. Mr. Kisia for the defendant/respondent and Mr. Brian Mboya holding brief for Kwanga Mboya, counsel for the plaintiff/respondent have agreed that the Notice of Motion be comprised that status quo to

prevail. That no party to the suit shall confine with further development on the suit premises pending hearing and determination of the suit.

4. The parties have agreed that the Preliminary Objection dated 29/9/2017 be and is hereby marked as withdrawal with no orders as to costs.

5. Hearing on 14/3/2015 of the main suit. The parties may file further documents and serve them within 30 days from the date hereof.

DELIVERED, DATED and SIGNED at MIGORI this 23th day of November 2017.

G. ONGONDO

JUDGE

In presence of :-

Mr. Brian Mboya for Plaintiff

Mr. Kisia for the Defendant

Tom Maurice – Court Assistant.