



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 35 OF 2015.

HERENIA ADIPO OGEDA.....APPLICANT

=VERSUS=

JOHN ANGIO ESIBA.....RESPONDENT

RULING.

1. **HERENIA ADIPO OGEDA**, the Applicant, through M/S. Balongo & company Advocates, filed the Notice of Motion under certificate of urgency dated 13th April, 2015 for temporary injunction over two acres of South Teso/Angoromo/1042 against **JOHN ANGIO ESIBA**, the Respondent. The Application is based on the four grounds set out on the face of it and the supporting affidavit of the Applicant sworn on the 13th April, 2015.
2. The application is opposed by the Respondent through the replying affidavit sworn on 5th May, 2015 and filed through M/S. Gacheche Wa Miano.
3. The court heard the application on 6th May, 2015 when Mr. Jumba and M/S. Achara for the Applicant and Respondent respectively presented their submissions.
4. The issue for determination is whether the Applicant has been in possession of the 2 acre portion of South Teso/Angoromo/1042 and if so, whether the Respondent has unlawfully interfered with her use of that portion. Secondly, whether temporary injunction should issue. The court has carefully considered the grounds on the application, the supporting and replying affidavit and find as follows;
 - a) That the copy of the certificate of official search for South Teso/Angoromo/1042 filed with the originating summons dated 13th April, 2015 shows that the registered proprietor is Anyi Emaillet Atanasi since 16th September, 2006.
 - b) That the copy of letters of grant issued in Busia H.C Succession Cause number 265 of 2014 filed with the said originating summons shows that the said Anyi Emaillet Atanasi died on 14th August, 2011 and that the Respondent herein was on 1st October, 2014 appointed the administrator of the estate.
 - c) That the copy of summons for revocation or annulment of grant attached to the Respondent's replying affidavit sworn on 5th May, 2015 shows clearly that the Applicant is challenging the Respondent's appointment as administrator of the estate of the Anyi Emaillet Atanasi. The application is dated 17th December, 2014 and appears to have been filed before the application in this court. If the Applicant was to be successful

in her application in the Succession Cause, it is highly probable the order to be issued would have an impact on the capacity of the Respondent in these proceedings.

d) That in view of the existence of Busia HC. Succession Cause No. 265 of 2014, which is pending and was filed before this case and so as to avoid the possibility of the court issuing contradicting orders on the same subject matter, it is desirable that this suit be stayed pending the final determination of the Applicant's application in the said succession cause dated 17th December, 2014.

e) That as the Respondent has disputed the Applicant's claim that she has been in possession of the two acre portion, and in view of the Respondent being the administrator of the estate of the registered proprietor of the suit land, the application under certificate of urgency dated 13th April, 2015 is without merit.

5. That the court having found as above issues the following orders;

a) That the application dated 13th April, 2015 is hereby dismissed with costs.

b) That the proceedings herein are stayed pending the hearing and final determination of the capacities of the parties herein in Busia H.C. Succession Cause No. 265 of 2014.

It is so ordered.

S. M. KIBUNJA.

JUDGE.

DATED AND DELIVERED ON...11TH DAY OF JUNE, 2015.

IN THE PRESENCE OF;

APPLICANT.....ABSENT.....

RESPONDENT.....PRESENT.....

COUNSEL...MR. JUMBA FOR APPLICANT, M/S. OCHARO FOR RESPONDENT.

JUDGE.