



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 10 OF 2012.

WILSON OCHIENG ANYIM..... APPLICANT

=VERSUS=

CHARLES ODHIAMBO OGUTU..... RESPONDENT

R U L I N G.

NELSON OCHIENG ANYIM, hereinafter referred to as the Applicant, filed the Notice of Motion under certificate of urgency dated 24th July, 2014 through M/S. Balongo & company advocates seeking;

“ b)an interim order of injunction restraining , the Respondent (Charles Odhiambo Ogutu).....from dealing with land parcel No.Bunyala/Mudembi/896 pending the hearing of the application interpartes.”

The Applicant also prays for costs.

The application is based on the four grounds on the face of the application that;

- a. The Respondent is erecting a fence around the Applicant’s homestead.
- b. The Respondent is digging trenches and foundation and depositing building materials on the disputed parcel of land.
- c. The Applicant is apprehensive over the safety of his homestead.
- d. The Respondent is determined to put up structures on the disputed land notwithstanding the pending litigation.

The application is also supported by the affidavit of Wilson Ochieng Anyim sworn on 24th July, 2014 in which he among others deponed that Jacob Onyango Owino transferred the suit land to the Respondent when this suit was pending.

The Respondent, Charles Odhaimbo Ogutu, through M/S. Ouma – Okutta Associates Advocates filed a replying affidavit whose date of commissioning is not indicated opposing the application. The Respondent inter alia depones;

- a. That he is the registered owner of the suit land and hence entitled to use it.
- b. That he bought the land after the caution had been removed following the due process.

During the inter partes hearing, Mr. Jumba and Mr. Okutta advocates appeared for the Applicant and Respondent respectively.

The court has considered the grounds on the application, submissions by counsel, supporting and replying affidavits and find as follows;

- a. That the main suit was commenced through the originating summons filed on 30th October, 2012. The originating summons has five Applicants with Wilson Ochieng Anyim, the Applicant herein, as the 3rd Applicant. It also has two Respondents with Charles Odhiambo Ogutu, the Respondent herein, as the 2nd Respondent.
- b. That at the time of the filing of the originating summons, the suit land, Bunyala/Mudembi/896, was registered in the names of Jacob Onyango Owino, who is the 1st Respondent.
- c. That the Respondent in this application got registered as the proprietor of the suit land on 12th August, 2013 and had the title deed issued on 31st October, 2013 when this case was pending in this court.
- d. That by the time this suit was filed, the 1st Applicant, Francis Odongo Odere, had on 18th October, 2012 filed a restriction on the suit land claiming a half share.
- e. That the restriction was lifted on 14th May, 2013 by the Land Registrar.
- f. That even though, there was nothing that restricted the transaction between the Respondents resulting to the Respondent in the application being registered with the suit land, both knew of the existence of this suit as they had filed their replying affidavit, sworn by Jacob Onyango Owino, on 19th November, 2012.
- g. That the Notice of Motion dated 24th July, 2014 filed through counsel is already spent as it was only praying for interim restraining orders **“pending hearing of the application interpartes.”** The interim orders were issued on 24th July, 2014 and the interpartes hearing took place on 20th July, 2014, when the interim orders were extended to the date of ruling being 24th September, 2014. Had the Applicant wanted the orders to be issued after interpartes hearing to be in force until the suit is heard and determined, he would have clearly indicated so.
- h. That even though the Applicant’s counsel failed to apply for the restraining orders to remain in force pending the hearing and determination of this suit, this court has powers under Article 159 of the Constitution, Sections 3 (1) and 19 (1) of the Environment and Land court Act and sections 1A and 3A of the Civil Procedure Act to issue orders, even **suo moto**, aimed at giving effect to the overriding objective which is to facilitate the just, expeditious, proportionate and accessible resolution of disputes.
- i. That it is desirable that the status quo obtaining at the time this suit was filed be maintained pending the hearing and determination of this suit. To this end, and as the 1st Respondent has already transferred the suit land to the 2nd Respondent, the court will issue inhibition orders in exercise of the power granted under section 68 (1) of the Land Registration Act to conserve the suit land.

That from the foregoing, the court issues the following orders:

1. That the status quo obtaining as of the date of filing the originating summons dated 30th October, 2012 on the use of the suit land be maintained pending the hearing and determination of this suit.
2. That an inhibition against the suit land Bunyala/Mudembi/896 in terms of section 68 (1) of the Land Registration Act is hereby issued pending hearing and determination of this suit.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 24TH DAY OF SEPTEMBER 2014

IN THE PRESENCE OF;

JUDGE.

