



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Civil Case 30 of 2008

RACHEL KISIA TIMOTHY :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. FRANCIS SIMBUGA }:::::::::::::::::::::::::::: DEFENDANTS

2. GEOFREY

JUMBA}

RULING

The application before me is for an interlocutory injunction to restrain the defendants from cultivating, wasting, damaging or carrying out any developments on the suit land, until the suit is heard and determined. The said suit land is L.R. NO. KAKAMEGA/LUMAKANDA/4015.

It is the plaintiff's case that she was the sole registered proprietor of the suit land. She also said that she had, at all times material to this case, lived on and cultivated the suit land exclusively.

The Plaintiff says that she had put up her matrimonial home on the suit land. She had also put up a retail shop and a cattle shed, amongst other developments.

Notwithstanding the fact that the plaintiff was the registered proprietor of the suit land, upon which she had put up developments (as specified above), the defendants are said to have trespassed onto the said land, in November, 2007.

The Plaintiff says that the defendants started cultivating on the suit land, and also began erecting structures thereon, without the plaintiff's consent.

Interestingly, the 1st defendant, FRANCIS SIMBOGA, is a brother to the plaintiff, and he is said to be the owner of L.R. NO. KAKAMEGA.LUMAKANDA/4014.

In support of her application, the plaintiff provided this court with a copy of "Green Card" for the suit property.

The "Green Card" being an extract from the register maintained by the Land Registrar Kakamega, is prima facie evidence of the fact that the suit land was transferred to the plaintiff on 6th October 2003.

The application first came up for hearing, before me, on 9th June 2008. On that date, the defendants were represented by Mr. Were Advocate, who informed the court that he had only just come on record.

He therefore sought, and was granted an adjournment, so that he could have an opportunity to obtain, from the Lands Registry, the relevant documents relating to the suit land.

When the case next came up before the court, Mr. Were advocate was absent. However, both the defendants were present.

The defendants sought an adjournment, because their advocate was absent. However, the plaintiff opposed the application for an adjournment, because the defendants were said to be proceeding to put-up structures on the suit land, notwithstanding the interim orders which were then in force.

The court granted the adjournment sought, and set down the application for hearing on 7th July 2008.

On that date (7/7/2008) the defendants were not in court, nor was their advocate.

As the date had been fixed by the court, in the presence of the defendants, I allowed the plaintiff to argue the application, even though the defendants were absent.

The fact is that the defendants have not in any way whatsoever, challenged the application. They filed no replying affidavits or grounds of opposition.

Also, they filed no defence to the substantive claim.

And if that was not enough, the defendants and their advocate failed to attend court.

In the circumstances, the application is uncontroverted. I find and hold that the plaintiff has established a prima facie case, with a probability of success.

I am also satisfied that unless the orders sought are granted, the plaintiff will suffer irreparable loss.

Accordingly, in order to preserve the subject matter of the suit pending the hearing, it is hereby ordered that an injunction shall issue forthwith to restrain the defendants, whether by themselves or by their agents, servants, employees or otherwise howsoever, from entering onto, cultivating, wasting, damaging or carrying out any developments on the suit land, L.R. NO. KAKAMEGA/LUMAKANDA/4015. This order shall remain in force until the suit is heard and determined.

The costs of the application are awarded to the Plaintiff.

Dated, Signed and Delivered at Kakamega, this 13th day of October, 2008.

FRED A. OCHIENG

J U D G E



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