



Case Number:	Civil Case 118 of 2011
Date Delivered:	29 Feb 2012
Case Class:	Civil
Court:	High Court at Kisumu
Case Action:	Ruling
Judge:	Hilary Kiplagat Chemitei
Citation:	Judith Akinyi Obiero v Dorine Ndege Onyuro & 2 others [2012] eKLR
Advocates:	-
Case Summary:	..
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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JUDITH AKINYI OBIERO PLAINTIFF

VERSUS

DORINA NDEGE ONYURO.....1ST DEFENDANT

GILBERT NDEDE OKELLO2ND DEFENDANT

CLARICE AKINYI.....3RD DEFENDANT

RULING

The plaintiff filed her application dated 3rd August 2011 seeking the following prayers:-

- (a) That the application be heard exparte in the 1st instance.**

- (b) That the application be certified as urgent**

- (c) That pending the hearing and determination of this application inter parties there issues an injunction against the Defendants / Respondents compelling and/ or restraining them from interfering with and / or alienating plot of land title number Kisumu /Songhor /928 and title number Kisumu / Songhor / 927 measuring (12.80) Ha; (8.0) Ha and (4.8) Ha respectively.**

- (d) That the plaintiff be declared true owner and that the 1st defendant was holding the above parcels plot of land title number Kisumu / Songhor / 220, currently subdivided and transferred to Kisumu / Songhor / 927 and Kisumu / Songhor / 928 in trust.**

- (e) That the plaintiff be declared the owner of Parcel number Kisumu / Songhor / 220 subdivided and transferred to Kisumu / Songhor /927 and Kisumu / Songhor / 928 in adverse possession.**

(f) That the 1st, 2nd and 3rd Defendants be compelled to restore and/or restitute plot of land title number Kisumu / Songhor / 220, subdivided titles number Kisumu / Songhor / 928, Kisumu / Songhor / 927 measuring (12.8) Ha, (8.0) Ha respectively to original plot number Kisumu / Songhor / 220.

(g) That the 1st, 2nd and 3rd Defendants be compelled to transfer (8.0) Ha from the original title land number Kisumu / Songhor / 220 subdivided titles; Kisumu / Songhor / 927 and Kisumu / Songhor / 928 respectively to the Plaintiff / Applicant

(h) That the land registrar Kisumu to be ordered to facilitate the transfer of original Title number title number Kisumu / Songhor / 220; title number Kisumu / Songhor / 928; Kisumu / Songhor / 927.

(i) That the costs of this application be borne by the Defendants / respondents.

The same is supported by her affidavit sworn on 28th June 2011. She has deponed that the 1st defendant is her mother in law. The applicant husband has since died leaving her in the suit land. The land was previously registered as land parcel number Kisumu / Songhor / 220 but was later subdivided by the 1st respondent into two portions namely Kisumu / Songhor / 927 and 928

Her argument is that the 1st respondent sold and/or transferred that land to the 2nd and 3rd defendants without her knowledge. Her contention is that she has been staying in the land uninterrupted since 1986. Her prayer therefore is to stop the defendants from evicting her or dealing with the said parcel of land adversely pending the hearing of this suit.

The defendants have each filed replying affidavits to the said application. From the 2nd and 3rd defendants affidavit it's apparently clear that they purchased or got themselves registered in the suit parcel of land with full approval of the 1st defendant. They have in fact exhibited the titles.

The 1st defendant has not denied that she sold the land to the 2nd and 3rd defendant. Her contention however is that she had the right of subdividing and selling the land and that nobody is really interested in evicting the plaintiff from the portion she has been occupying.

This is an interlocutory application. The plaintiff's suit is based on adverse possession which obviously need adduction of evidence. The interest of this court is to preserve the status quo pending the final determination of this suit.

I have further perused the pleadings in this case including the parties statement and the documents and exhibits they intent to rely on at the full trial. I am satisfied that the applicant has a prima facie case. She has been on the suit land and this has not been contested. This position should be preserved till the suit is determined. I shall therefore allow the application as follows:-

(1) Pending the hearing and determination of this suit there be a temporary orders of injunction to restrain the defendants jointly and severally from charging, selling, sub-dividing or in any other way dealing or parting with land parcels numbers Kisumu /Songhor / 927 and Kisumu /Songhor / 928.

(2) Cost of this application do abide the main suit.

Dated, signed and delivered at Kisumu this 29th day of February 2012

H. K. CHEMITEI

JUDGE

In the presence of:

..... **Advocate for Applicant**

..... **Advocate for Respondents**

HKC/aao



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