

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CIVIL APPEAL NO. 38 OF 2021

(ORIGINATING FROM BUSIA C.A. 15/2020)

AGGREY OKUMU RUPIA.....APPELLANT

VERSUS

ALICE AYIETA WANZALA.....1ST RESPONDENT

ROSEMARY OKELLO WANZALA.....2ND RESPONDENT

RULING

1. I have considered the application dated 20th December 2021 under Certificate of Urgency seeking leave to be heard during the recess. I grant leave to be heard during the recess. I however decline to certify the application as urgent for the following reasons:

(1) That the orders for which stay of implementation is sought were made on 23/1/2020 almost two years ago and there is no reason given for the delay in seeking for a stay immediately after filing of the appeal in 2020.

(2) That although there is an allegation of violence erupting and that widows and orphans will be evicted from the land if the intended sub division of the Land No. Bukhayo/Malanga/605 is carried out by the Surveyor on 22/12/2021, the law that governs eviction from land gives a process for such eviction and mere subdivision of the land in compliance with a Certificate of a confirmed grant cannot amount to an order of eviction of occupants of the parcel of land as one has recourse to the legal process if they are aggrieved by actions of others.

2. For the above reasons, I direct the applicant to serve the Respondents with the application for *inter partes* consideration by the Presiding Judge, Busia High Court in the new term and on a date to be fixed by the Deputy Registrar of Busia High Court.

3. These proceedings to be transmitted to Busia High Court for further action.

3. On our part, this is closed. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 21ST DAY OF DECEMBER 2021

R.E. ABURILI

JUDGE