



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**MISC. APPLICATION NO. 9 OF 2017.**

**BENJAMIN BARASA WAFULA.....APPLICANT**

**VERSUS.**

**GEOFFREY WAFULA WASILWA.....1<sup>ST</sup> RESPONDENT**

**GLADYS NEKOYE MURUNGA.....2<sup>ND</sup> RESPONDENT**

**R U L I N G.**

[1]. This is an application of amended Notice of Motion dated 8/05/2017 and filed in Court the same day. The application is brought under Order 48 Rules 1 to 4 Order 40 rules 1 to 3 of the Civil Procedure Rules. It has also been brought under Land Registered Act Sections 18 upto 21.

The applicant prays for orders that the Honourable Court grant exparte orders restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents from demarcating the Applicant's LR No. Kimilili/Kamukuywa/339, building toilets and house thereon, then direct them to be confined and settled on their vendor's LR No. Kimilili/Kamukuywa/337. That the court be pleased to grant orders to stop the respondents from misusing court orders issues on 2<sup>nd</sup> June, 2016 to trespass and encroach on LR No. Kimilili/Kamukuywa/339 in terms of LR No. Kimilili/Kamukuywa/1408 formerly LR No. Kimilili/Kamukuywa/337.

[2]. Further that Court grant exparte orders directing the County Government of Bungoma Land Registrar and surveyor to resurvey the ancestral boundaries as well as the road access passing between LR Kimilili/Kamukuywa/337 and 339 pursuant to court order dated 21<sup>st</sup> June, 2016 which is being misused by the respondents for grabbing the applicant's deceased grandfather's portion of LR No. Kimilili/Kamukuywa/339. That court grants each party liberty to be accompanied by their own surveyors in order to avoid delays.

The application is supported by the grounds in the face of it and the supporting affidavit of BENJAMIN BARASA WAFULA. The applicant states that he hold power of Attorney to granted by Dismas Wanjala Wochuna the plaintiff in ELC No. 118 of 2015. That Counsels for the respondents in that case are the same ones in ELC No. 60 of 2014 where the same matters are being canvased and that they are intentionally avoiding the orders in ELC Case No. 118 of 2015 so that they can interfere with the applicant's parcel. I reply to this application Counsel for the 2<sup>nd</sup> respondent filed grounds of opposition citing the application as:-

- a) *Misconceived, incompetent and scandalous.*
- b) *An abuse of the due process of Court.*
- c) *Applicant has no locus standi to bring the application.*

This case is primarily about boundary dispute. This court has no jurisdiction to determine Suit dispute under Sec. 18 of the Land Registration Act.

This application is therefore dismissed with no order as to Costs.

**Dated at Bungoma this 10<sup>th</sup> day of January, 2018.**

**S. MUKUNYA**

**JUDGE**