



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

ELC. CASE NO. 172 OF 2014

BILDAD SIMIYU KHAKINA.....1ST PLAINTIFF

MOSES KHAKINA WAKHUNGU.....2ND PLAINTIFF

DAVID NYONGESA WAMBILIANGA.....3RD PLAINTIFF

VERSUS

DR. HENRY KERRE WAKHUNGU.....1ST DEFENDANT

DR. PHOEBE KHASIALA WAKHUNGU.....2ND DEFENDANT

THE DISTRICT LAND REGISTRAR.....3RD DEFENDANT

RULING.

[1]. I have perused, the notice of Motion filed by the plaintiff/applicant on 2nd October 2017 I have equally perused the Supporting Affidavit of the same. I have equally perused the Grounds of Opposition filed by the respondents on 9th November, 2017. I have also considered the Submission of Mr. Olonyi Learned Counsel for the applicant and the reply of Mr. J.S. Khakula learned Counsel for the respondents. I have also considered the fact that the parties herein initially purchased the suit properties together and have on several occasions attempted to settle this suit.

[2]. The issue at hand cannot be dealt comprehensively with by imprisoning parties to the suit at the moment. In the final analysis, demolition of the building built on the opposite parties land may eventually not be avoided should the parties continue to construct in utter disregard of court orders. The court will eventually decide whether damages will be payable. Restraint is advised when attempting to construct.

[3]. I therefore order that this suit should be fixed for hearing on a priority basis to determine the issue between the parties. Parties are well warned to obey court orders to avoid future consequences of having to demolish the buildings built on the piece of land that does not belong to those purporting to construct.

It is so ordered.

Judgment read in open Court in the presence of the advocates.

Dated at Bungoma this 22nd day of February, 2018.

S. MUKUNYA

JUDGE

In the presence of:

Joy: Court Assistants

Mr. Olonyi for the Plaintiff Applicant

Mr. Amani for Mr. Khakula for Plaintiff - Respondent