



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA IN BUSIA
LAND & ENVIRONMENTAL DIVISION

ELC NO. 27 OF 2016

PETER CHEGE1ST PLAINTIFF

MONICAH NYAMBURA 2ND PLAINTIFF

VERSUS

ADIT OGOT AMBROSE 1ST DEFENDANT

AMIN OGOT 2ND DEFENDANT

OPUNDA AGOT 3RD DEFENDANT

DEMTILLA ADET OGOT 4TH DEFENDANT

R U L I N G

1. The application before me is a Notice of Motion dated 30/3/2016 and filed the same date. It is an application by the two Plaintiffs/Applicants - **PETER CHEGE** and **MONICAH NYAMBURA** - against the Defendants/Respondents - **ADIT OGOT AMBROSE, AMIN OGOT, OPUNDA AGOT and DEMTILLA ADET OGOT**. At this stage, what the Court is invited to consider are prayers 3 and 6, which are essentially about a restraining order and costs. Prayers 1 and 2 had come for consideration at the EXPARTE stage. They are not for consideration now.

2. The prayers for consideration are as follows:

Prayer 3: That this honourable Court do issue an order of temporary injunction against the Defendants/Respondents by themselves, their servants, workers, agents, 3rd parties restraining them from disposing off, alienating and/or transferring LR. No. BUKHAYO/MUNDIKA/2681 from the Plaintiffs ownership pending the hearing and determination of the main suit.

Prayer 6: That the costs of this application be provided for.

3. When the application first came to Court Exparte on 30/3/2016 the Court declined to grant prayer 2 and ordered that the application be served first. The application was then served and slated for hearing on 26/4/2016. On the date for hearing, the Defendant/Respondents, though served, failed to appear and had not responded to the application. The Court allowed the application and specifically granted prayers 3 and 6. These are the same prayers that are up for consideration now.

4. Infact prayer 3 as granted on 26/4/2016 and extracted as an order dated 3/5/2016, has been the subject of Contempt of Court proceedings herein. The ruling on contempt proceeding was delivered by this Court on 25/1/2017.

5. It is obvious then that it was a mistake to assume that the application herein should be heard. The application was concluded on 26/4/2016. This ruling therefore is not meant to revisit the application or the prayers sought. The best I can do is to declare the application spent and incapable of re-adjudication. And I so declare.

Dated, signed and delivered at Busia this 27th day of July, 2017.

A. K. KANIARU

JUDGE

In the Presence of:

1st Plaintiff:

2nd Plaintiff:

1st Defendant

2nd Defendant

3rd Defendant

4th Defendant

Counsel: