



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 110 OF 2013

JONATHAN KISIANG'ANI KING'ARU1ST APPLICANT

TOM MALABA KING'ARU..... 2ND APPLICANT

SHEM NABUYUMBU KING'ARU.....3RD APPLICANT

VERSUS

PETER WAFULA KUMALI1ST RESPONDENT

SAMUEL KIPTECH KUMALI2ND RESPONDENT

FRANCIS WASWA KING'ARU3RD RESPONDENT

TITUS WAMALWA KUMALI4TH RESPONDENT

WYCLIFFE MASIBO MANGUNYA5TH RESPONDENT

BEN WASWA6TH RESPONDENT

JOHN NALIAKHO KUMALI7TH RESPONDENT

RULING

[1] The applicants brought this application on 20th June, 2016. No rule upon which the case is grounded is cited. The applicants pray for an injunction to restrain the defendants/respondents from cutting down trees planted by the applicants in the piece of land known as S.Malakisi/N. & C Namwela/700 now subdivided into 1103, 1104 and 1105 respectively. They further pray that they be given leave to file a statement of Defence and a Memorandum of Appearance and other related documents out of time upon payment of court fees and finally that the court do review and set aside its order and judgement issued ex parte and delivered on 15th June 2015.

[2] The application is opposed by the respondents who filed grounds of opposition and argued that the application is defective and lacks merit and that the same is an abuse of the process of the court. Further that the application was overtaken by events as there was a judgement and eviction orders dated 28/09/2015 were executed.

[3] Judgement in this case was delivered on 15/7/2015. The applicants were represented by counsel. Costs were assessed by the Deputy Registrar at Kshs.160,074/= on 24/4/2016.

There has not been any appeal and or stay orders granted herein. This court is clearly functus official. The application by the applicants is misconceived. It has no merits and is dismissed with costs.

Dated, Signed and delivered at Bungoma this 27th day of July 2016

S.MUKUNYA - JUDGE

In the presence of

Gladys/Joy - Court Assistants

Miss Bett - Holding brief for Areba for the Plaintiff

Defendant - Absent