



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**LAND AND ENVIRONMENT CASE NO. 90 OF 2015**

**JOSEPH MUKONYE GIBENDI .....PLAINTIFF**

**VERSUS**

**VINCENT CHOLE MUKONYE.....1<sup>ST</sup> DEFENDANT**

**ASWANI ADAGALA MUKONYE .....2<sup>ND</sup> DEFENDANT**

**RULING**

[1] Two applications were filed in this case. An application dated 13<sup>th</sup> July 2015 by the plaintiff praying for orders that the respondents be restrained by themselves, their servants and agents from trespassing and occupying Title Number east Bukusu/South Nalondo/4693 pending the hearing of this suit.

[2] A further application dated 28/7/2015 is by Truphena E. Mukonye praying that she be made an interested party on the ground that she is the biological mother of the defendants and the wife of the plaintiff. She claims the land to be a matrimonial property.

[3] The interested party alleges that the plaintiff has sold a portion out of the said land of 0.5 ha to Moureen Nasambu Simiyu and a portion of 50 x 100 feet to Moses Kusimba Wamalwa. It is alleged that the defendants have prevented access of the said purchasers from the said land.

[4] The plaintiff denies the allegation of the interested party. He swore a relying affidavit that the interested party stays on East Bukusu/South Nalondo/4690 with all her children. That she does not stay on East Bukusu/South Nalondo/4693 the subject matter hereof. That the interested party has not established that she lives on East Bukusu/South Nalondo/4690 and that her application fails.

[5] There is no doubt the issues in the suit and the application, is whether the defendants and their mother, the applicant as interested party do stay and live on the suit land East Bukusu/S. Nalondo/1493. Further, the other question will be whether the suit land is a matrimonial home of the plaintiff interested party and therefore whether there is an overriding interest on the said land as far as the interested party is concerned.

These issues cannot be determined at this stage. Determining them would be tantamount to determining this suit through interlocutory applications. The suit itself must be fixed for hearing and the same be heard on merits.

[6] The court therefore makes the following orders:

(a) That the status quo obtaining in land parcel East Bukusu/S.Nalondo/4693 be maintained pending the hearing of this suit.

(b) Truphena E. Mukonye is made a party to this suit.

(c) This suit shall be fixed for hearing on merits by the parties.

Dated, Signed and delivered at Bungoma this 27<sup>th</sup> July day of 2016.

**S.MUKUNYA JUDGE**

**In the presence of**

Court Assistants - Gladys/Joy

Mrs. Murambe for Bw'Onchiri for the Plaintiff

Mr. Milimo for the Defendant – absent