



REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA.

ENVIRONMENT AND LAND CASE NO. 163 OF 2016.

JOHNSTONE OGADA VIKIRU.....PLAINTIFF

VERSUS.

JONATHAN MAHUGI.....1ST DEFENDANT

FREDRICK BWOYELA.....2ND DEFENDANT

FRANCIS AMBANI.....3RD DEFENDANT

RULING.

[1]. The applicants herein filed this application dated 30th August 2016 under Order 40 rule 1 Section 3, 3A and 6(e) of the Civil Procedure Rules Act Cap 21 Laws of Kenya. They pray for a temporary injunction restraining the defendants, their agents employees servants, personal representative or anybody from burying the body of NATHAN KADUKA on the applicant's Parcel of land registration number Kakamega/Bugonda/2069 pending the determination of the suit. The application was supported on the grounds therein.

[2]. The application was supported by the affidavit of Johnstone Ogada Vikiru who swore that he is the registered owner of Kakamega/Bugonda/2069. He swore that he knew that Nathan Kaduka died and his body was preserved at St. Elizabeth Mukumu Hospital awaiting burial. That his sons have forcefully erected a temporary house on the applicants land purporting it to belong to the deceased. The applicant swears that the sons of the deceased have their own lands which they can freely bury their father. He argues that it is in the interest of Justice that the respondent should be restrained.

[3]. The respondents were served with the Complaint, the application and the orders of this Court. They appeared through D.C. Chitwah & Co. Advocates who filed grounds of opposition on 8th September, 2016. The grounds said that the application was an abuse of the process of the Court that the applicant had not come to Court with clean hands, that the applicant was the registered owner of Kakamega/Bugonda/2069 in trust for the respondents and that the application does not meet the principles of granting an injunction. On the 2nd September the defendant filed a notice of motion under order 40 rule 7 and order 2 rule 15 and Sections 3A 3 and 7 of the Civil Procedure Rules praying that the orders of this Court of 30/8/2016 be reviewed and the Complaint filed on 30/8/2016 be struck out and that St. Elizabeth Mukumu Hospital Mortuary do release the body of NATHAN KADUKA.

The parties appeared in Court on 6/9/2016 and agreed that those applications be consolidated and be heard together on 14/9/2016 and parties through their advocates be given leave to file their replies and responses. On the 9th of September, 2016 the respondents filed a notice to Act in Person.

[4]. The matter came for hearing on 14/9/2016. The respondents had filed no papers. The applicant told the Court that he was the registered owner of the land. That the respondents have their own lands. That the deceased had his own land which he sold. He annexed the title of his land showing he is the registered proprietor. He said that there is clan land where the deceased should be buried. The respondents had nothing else to say.

This application is not opposed by the respondents who were given an opportunity to file their Affidavits in opposition and have not done so. There is nothing in Court to show that the land is held in trust or that it does not belong to the applicant. The law allows the applicant to exclusive use of his land. I allow the applicant's application with no orders as to costs.

Ruling read in Open Court In the presence of the parties.

Dated, Signed and delivered on 29th September, 2016

S. MUKUNYA

JUDGE.

In the presence of:

Court Assistant: Joy

Plaintiff: Present

Defendants: Present