



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

HIGH COURT CIVIL APPEAL NO. 1 OF 2015

VINCENT EGESA NYONGESA.....APPLICANTS

FLORENTIUS JUMA NYONGESA

VERSUS

FRANCIS MUKHULU OMENGORESPONDENT

RULING

VINCENT EGESA NYONGESA and FLORENTIUS JUMA NYONGESA hereinafter referred to as 1st and 2nd Applicants filed the notice of motion under certificate of urgency dated 16th January, 2015 against **FRANCIS MUKHULU OMENGO**, hereinafter referred to as the Respondent for among others the following orders;

“ 3. *That pending the hearing of this application interpartes there be stay of the Chief Magistrate’s order in Chief Magistrate Civil Case No. 437 of 2014.....issued on 2nd December, 2014.*

4. *That the Ruling and orders of the Chief Magistrate’s Civil Case No. 437 of 2014 be suspended pending the hearing and determination (of) this appeal.”*

The application is based on the six grounds on the face of the application and the supporting affidavit of the 2nd Applicant sworn on 16th January, 2014 (2015).

The application is opposed by the Respondent, who filed a replying affidavit sworn on 26th January, 2015 and another affidavit of Mathias Imbwagh sworn also on 26th January, 2015.

This application had been filed contemporaneously with the memorandum of appeal dated 16th January, 2015 on the order of Hon. Maragia, Resident Magistrate, of 2nd December, 2014 in CMCC. No. 437 of 2014.

I have considered the grounds of the application, submissions by both counsel, the supporting, replying and witness evidence affidavits and find as follows;

1. That by the plaint dated 28th October, 2014, the Respondent filed a claim against the Applicants in Busia CMCC. No. 437 of 2004 praying for a declaration that the Applicants had trespassed onto Bukhayo/Bugengi/2987 and should be evicted.
2. That even though the copy of the defence filed by the Applicants, if any has been filed, has not

been availed in these proceedings, it is clear the Applicants had opposed the application dated 28th October, 2014 by filing a replying affidavit. This is discernable from the submissions made on 11th November, 2014. (see copy of the proceedings attached to the supporting affidavit)

3. That the orders of 2nd December, 2014 had the effect of granting part of prayer (a) of the plaint (eviction) without affording the parties the opportunity to tender evidence.
4. That noting that the Respondent appear to have transferred ownership of the suit land to Roselyne Barasa on 23rd December, 2014 as confirmed by the copies of the certificates of official search annexed to the replying affidavits, the court finds that it is only fair and just to issue appropriate orders to ensure the suit property is preserved as the appeal filed herein is heard. The following orders are therefore issued;
 - a. That the orders issued by Hon. J.M. Maragia, Resident Magistrate on 2nd December, 2014 in Busia CMCC. No. 437 of 2014 be and are hereby stayed pending hearing of the appeal.
 - b. That in view of the fact that the suit property has changed ownership since the order of 2nd December, 2014, an inhibition order on the title in terms of Section 68 of the Land Registration Act, 2012, is issued pending the hearing of this appeal.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 24th DAY OF FEBRUARY, 2015.

IN THE PRESENCE OF; PRESENT1ST APPLICANT

PRESENT2ND APPLICANT

PRESENT.....RESPONDENT

MR. FWAYA FOR KASAMANI FOR THE APPELLANTS/APPLICANTS.

JUDGE