



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**LAND AND ENVIRONMENT CASE NO. 29 OF 2014**

GRACE NAMAROME  
MUKHWANA.....APPLICANT

VERSUS

JOEL KHAKAME MUKHWANA

KARIMU JUMA MUKHWANA

EMMANUEL WANJALA MUKHWANA

MARISELLA NABUKWANGWA MUKHWANA.....  
RESPONDENT

**RULING**

1. The Applicant moved the court by an application dated 11<sup>th</sup> February 2014 seeking orders;
  - i. That this Application be certified as urgent and service be dispensed with in the 1<sup>st</sup> instance.
  - ii. That while pending the hearing of this application inter parties his Lordship be pleased to issue a temporary injunction to restrain the Defendant/Respondent's/ their agents and/or servants from entering/cultivating/cutting trees/building houses and/or committing acts of waste/or in any other manner whatsoever, interfering with the Plaintiff's use of land comprised in the **TITLE NO. BUNGOMA/KAMUKOIWA/3447**.
  - iii. That the prayer in 2 herein be confirmed and/or extended while pending the hearing and final determination of the suit herein.
  - iv. That the O.C.S. Mukuyuni police station be directed to ensure that the Orders issued herein are complied with.
  - v. That costs of this application be provided for.
2. Prayer 1 and 2 was granted at an interlocutory stage. The 4<sup>th</sup> Respondent has sworn an affidavit on her own behalf and on behalf of the 1<sup>st</sup> - 3<sup>rd</sup> Respondent. She is the estranged wife of James Mukhwana Wakaenya – deceased, who is the registered owner of the suit parcel of land **No BUNGOMA/KAMUKOIWA/3447**.
3. I have considered all the issues raised in the pleadings filed by both parties. It is clear the Applicant has taken out letters of administration of the estate of James Mukhwana – deceased. Those letters are yet to be confirmed. The issue in dispute relates mainly to sharing of the land title **NO. BUNGOMA/KAMUKOIWA/3447** and determination of who the true beneficiaries are. I do find therefore that the proper court to resolve this dispute would be the High court handling the succession cause.
4. I therefore do direct all the parties herein to only use the portions of land they were using prior to the death of James Mukhwana as they await the distribution of his estate. This infers that if a party feels

he/she is entitled to a portion of **BUNGOMA/KAMUKOIWA/3447**, let him/her present her claim within the succession cause No. 221 of 2013. The orders of injunction I therefore grant is to restrain any party from sharing and/or distributing and/or interfering with L.R. No. **BUNGOMA/KAMUKOIWA/3447** pending further orders of this court. This matter be mentioned on 12<sup>th</sup> June 2014 to confirm the status of distribution of the estate of James Mukhwana in the Bungoma High Court succession cause No. 221 of 2013.

**DATED, SIGNED and DELIVERED** this 31st day of March 2014.

**A. OMOLLO**

**JUDGE.**