



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 95 OF 2014. (FORMERLY HCC. NO.5 OF 2012)

JOSEPHINE ADIKNYI :::PLAINTIFF

=VERSUS=

FRANCIS MAKOKHA JUMA & 3 OTHERS::::::::::RESPONDENTS.

J U D G M E N T.

FRANCIS MAKOKHA JUMA, VICTOR OUMA JUMA, JULIUS BARASA MBOMERE and STEPHEN OKUKU MBOMERE, hereinafter referred to as 1st to 4th Applicants through Obwoye Onsongo & company advocates filed the notice of Motion dated 28th June, 2014 for temporary injunction against Josephine Adikinyi, hereinafter referred to as the Respondent, restraining her and those claiming under her from any dealing with Bukhayo/Mundika/2383, 10322, to 10326 pending hearing and determination of this suit.

The application is based on six grounds marked (1) to (6) on the face of the application and supporting affidavit of Vincent Okuku Okumu sworn on 28th June, 2014.

The application is opposed through the replying affidavit of Josephine Adikinyi sworn on 2nd July, 2014.

During the hearing, Mr. Onsongo and Mr. Ipapu for Luchivya advocates appeared for the Applicants and Respondent respectively.

I have considered the grounds on the application, supporting and replying affidavits and submissions by counsel and find as follows:

1. That the supporting affidavit was sworn by one Vincent Okuku Okumu who describes himself in paragraph 1 as the “2nd Respondent herein.” However all the pleadings filed herein do not have a party to the suit named Vincent Okuku Okumu. The papers filed herein has the names of Victor Ouma Juma as the 2nd Respondent and the connection between that name to Vincent Okuku Okumu has not been disclosed to the court.
2. That from the testimonies of the Respondent and her two witnesses (PW 2 and PW 3) of 7th May, 2014 the Respondent had not been using the land by the time she testified in court. It is noted that her claim before the court is to be declared the owner of a portion of the suit land through adverse possession. She filed the suit on 1st February, 2012 and the court has not pronounced itself on her prayers nor has it issued orders to the effect that she retakes possession of the suit land. It is imperative that the status quo obtaining as of the date the suit was filed be continued until the suit is heard and determined.
3. That any attempt by the Respondent or those claiming under her to retake the suit land and

construct houses thereon without the court's blessings is likely to result to a breach of the peace as the Applicants are likely to resist. This is the situation that the Applicants application seeks to avoid.

For the reasons set out above, the court allows the application limited to ordering the parties to maintain the status quo, in respect of the suit land, that was obtaining on the date this suit was filed pending hearing and determination of this suit. The costs of the application be in the cause.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 31ST DAY OF JULY, 2014.

**IN THE PRESENCE OF; PLAINTIFF, 1ST AND 4TH DEFENDANT AND MR. WANYAMA FOR
ONSONGO FOR DEFENDANTS.**