



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**LAND & ENVIRONMENT CASE NO: 176 OF 2013**

**PAMELA NALIAKA MAKOKHA.....1<sup>ST</sup> APPLICANT**

**PHANICE AYUMA KARUPA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**MUTIMBA LUTOMA.....1<sup>ST</sup> RESPONDENT**

**JAMES BIKETI.....2<sup>ND</sup> RESPONDENT**

**RULING**

The plaintiff's application dated 11/6/2013 is seeking several orders including an order of injunction restraining the defendants from interfering with her peaceful occupation of plot number **NORTH KABRAS/SURUNGAI/621** pending the hearing and determination of this suit. The application is supported by her affidavit sworn on the same date.

The defendants swore a joint affidavit on 25/7/2013. Counsels for both parties agreed to rely on the application and replying affidavit. The applicant contends that she was married to the first respondent's grandson. She had one child with the 1<sup>st</sup> respondent's grandson who is the 2<sup>nd</sup> applicant. The 1<sup>st</sup> applicant's husband is now deceased. She has been living on the suit land with her child but the defendants have threatened her with eviction. She would like to be registered as a co-owner to the property.

On their part the respondent's maintain that the 1<sup>st</sup> respondent is the registered owner of the suit land. He has sold two acres to the 2<sup>nd</sup> respondent. The applicant was merely a girl friend to the 1<sup>st</sup> defendant's grandson and has no lawful claim over the suit land.

The record show that the 1<sup>st</sup> applicant husband died of a road accident on 18/12/2011. It is also established that the plaintiffs live on the suit land. The entire land is 2.8 hectares. Since the 1<sup>st</sup> respondent is the registered owner of the land, he has the right to sell a portion of the land. He contends that he has sold two acres to the 2<sup>nd</sup> defendant. The defendants seem to deny that they intend to evict the applicant from the suit land.

Having some through the plaintiff's application, I do find that most of the orders can only be granted after a full hearing. All what is relevant at this moment is for the applicant to continue living on the suit land pending the determination of this suit.

In the end, I do find that the 1<sup>st</sup> defendant is at liberty to sell two (2) acres to the 2<sup>nd</sup> defendant provided that those two acres do not include the portion occupied by the applicant. The application dated 11/6/2013 is granted in terms of prayer (c) only but it is only limited to restraining the defendants from evicting or interfering with the plaintiff's occupation of part of the suit land. The other prayers shall wait for the hearing of the main suit. Costs shall also await the outcome of the main suit.

Dated, delivered and signed at Kakamega this 17<sup>th</sup> day of September 2014

**SAID J. CHITEMBWE**

**JUDGE**