

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

LAND & ENVIRONMENT CASE NO: 133 OF 2014

1. **BENSON KWENDO ABULWA**
2. **PRISCAH ANUPI ABULWA**
3. **RAYMOND ABULWA**
4. **GRACE NYANDIWA ORADO**
5. **DORICE OKEYO****PLAINTIFFS**
6. **MARY ABULWA**
7. **NELLIA ABULWA**
8. **PAULINE ABULWA**

VERSUS

1. **SAMUEL ABULWA**
2. **NANGAME ABULWA****DEFENDANTS**

RULING

The plaintiffs herein are the sons of the 1st defendant. The 2nd defendant is their brother. By their application dated 25/4/2014 the applicants are seeking an order of injunction stopping the defendants from dealing with plot number **E.BNYORE/IBOONA/58** pending the determination of this matter. They also seek an order that preservative orders be issued directing the Land Registrar from making any further entries on the suit land.

The application is supported by the affidavit of the 1st applicant. The two defendants filed a joint affidavit on 4/6/2014.

The applicants contend that their father is polygamous and left their homestead in 1985. They have developed the suit land but the 1st defendant intends to transfer the land to the 2nd defendant. The second defendant has started fencing the land and has denied them the right of way and they cannot access their homes.

The defendants contend that the 1st defendant sub-divided his land among two of his sons who are the 2nd defendants and the 1st plaintiff. The 1st plaintiff was given land in Lugari. The 1st defendant maintains that he does not intend to discriminate among his children. They also maintain that there is no intention

to demolish any of the plaintiff's houses.

The dispute involves a father and his sons. The father is alive and the registered owner. Since there is no evidence that the plaintiff's houses have been demolished and the defendants admit that they do not intend to demolish any of the houses, I do find that the current application is premature. I have seen the minutes of the family meeting held on 28/12/2011 it is indicated that the land cannot be sub-divided into nine (9) equal parts. One of the sons was to be registered to hold in trust for the entire family. I do find that such an arrangement will not disinherit the plaintiffs.

The minutes also indicate that all the houses on the land shall remain in their current positions.

I do find that there is no merit in the application dated 25/4/2012 and the same is hereby dismissed with no orders as to costs. The matter to be listed before the land and Environment court for further directions.

Dated, delivered and signed at Kakamega this 16th day of September 2014.

SAID J. CHITEMBWE

JUDGE