



REPUBLIC OF KENYA

High Court at Busia

Environmental & Land Case 25 of 2012

ALLOYSIUS G. WANDA)

PAMELA KAVOKI WANDA)APPLICANTS

V

FLORENCE ASAMI AGORO)

JACKTON OINDI AGORO)

RAPHAEL AMUKUYI AGORO)

.....RESPONDENTS.

REUBEN MAKANGA AGORO)

CHARLES LUKOSE AGORO)

ELPHAS MBAYI AGORO)

R U L I N G.

ALLOYSIUS WANDA and **PAMELA KAVOKI WANDA** hereinafter referred to as 1st and 2nd Applicants respectively through M/S. Balongo and company Advocates filed Notice of Motion under certificate of urgency dated 16th April, 2013 for interim order of injunction restraining the Respondents from dealing with L.R. Bukhayo/Bugengi/1727 pending hearing and determination of this suit. The application is based on the following grounds:-

- a) That the Respondents have forcefully entered into the said land.
- b) That the Respondent have started dividing and cultivating on the said land with the aim of frustrating the court process.
- c) That the Respondents should not be allowed to agitate their claim over the land through violence.

The application is supported by the supporting affidavit deponed by the 1st Applicant on 16th April, 2013 in which he avers that the Respondents have chased away his workers and uprooted the crops claiming their advocate has advised them that the court has ruled in the favour. He added that the Respondent have razed down a semi-permanent structure on the land claiming the court has granted them the right to use the land.

The Respondents, namely, Florence Asami Agoro, Jackton Oindi Agoro, Raphael Amukuyi Agoro, Reuben Makanga Agoro, Charles Lukose Agoro and Elphas Mbayi Agoro, hereinafter referred to as 1st to 6th Respondents opposed the application through a replying affidavit of the 1st Respondent filed through their advocate M/S.Wanyama & company Advocates sworn on 13th May, 2013. She depones that her sons have been cultivating on the land in question from the time it was shared out among them. That the land is family land and the Applicants have been using brokers to interfere with their cultivation of the land by threatening violence and arrest.

Mr. Jumba and Wanyama advocates for the Applicants and Respondents respectively appeared for the respective parties during the hearing. Mr. Jumba submitted that the Applicants, as registered owners of the land, have the right to use the land in question as it was vacant and there was no matrimonial home when they bought it. Mr. Wanyama rebutted this claim submitting that the Respondents main suit is to have the names of Applicants removed from the ownership register of the suit land. That the land was sold to the Applicants in contravention of the Land Act as 1st Defendant was not consulted and her concurrence obtained. That under the land Registration Act, a registered owner has obligations to those relying on the land.

Now having carefully considered the submissions by counsel and the materials presented through the affidavits and other pleading herein, I am of the considered view, without of course making a final decision, that the Respondents were in possession of the suit property or parts of the suit property before the 1st Defendant transferred it to the two applicants herein. One perusing the copy of the register of the land would not fail to see the 1st Respondent has on about two occasions filed a caution over the said land which would be taken to be a manifestation of a claim whether valid or otherwise.

This being the case and considering the Applicants got to be registered with the land only on 2nd October, 2012, I am of the view an order of interim injunction should not issue and instead the matter should proceed to hearing of the main suit. This is especially so when the court considers the 1st Respondent has availed evidence of a marriage to 1st Defendant and the pleadings herein appear to raise the issues of

fraud in the way the Applicants got registered with the land. The spousal interests in accordance with sections 27 and 93 of the Land Registration Act No. 3 of 2012 are likely to be canvassed during the hearing and the Applicants are not going to be prejudiced by failure to issue the interim injunction orders:-

Secondly, interim injunction orders cannot be issued in a vacuum. The orders are available to conserve a situation awaiting further orders. In this case as correctly submitted by Respondents counsel there is no outstanding claim by the Applicants other than their defence to the Respondents suit. The defence alone without any other claim cannot be the basis of the issuance of an interim injunction orders and for this reason also the application fails.

For the reasons shown above the Applicants application dated 16th April, 2012 is dismissed with costs.

S. KIBUNJA,

JUDGE.

23RD MAY, 2013.