



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUSIA.**

**ELC. NO.39 OF 2013.**

**DENNIS EMMANUEL BWIRE .....APPLICANT**

**VERSUS**

- 1. SELINA BWIRE ]**
- 2. DENNIS BWIRE ]**
- 3. EVANS BWIRE ].....RESPONDENTS.**
- 4. OSCAR BWIRE ]**
- 5. KEVIN BWIRE ]**
- 6. GABRIEL BWIRE ]**

**JUDGMENT.**

The Applicant, Dennis Emmanuel Bwire, filed the notice of Motion dated 5.6.2013 against Selina Bwire, Dennis Bwire, Evans Bwire, Oscar Bwire, Kevin Bwire and Gabriel Bwire, hereinafter referred to as 1<sup>st</sup> to 6<sup>th</sup> Respondent for the following two main prayers;

(2) That temporary injunction be issued pending the hearing and determination of this application, restraining Respondents from tiling alienating, building /erecting structures, remaining and tampering with Land parcel Samia/Bukangala/ 'A'/13.

(3) That Busia CMCC. 320 of 2012 be transferred to this court for hearing and determination.

The application is based on the four grounds set out on the application and supporting and supplementary affidavits of Dennis Emmanuel Bwire, sworn on 5.6.2013 and 27.09.2013 respectively.

The application is opposed through the replying affidavit of Selina Bwire, sworn on 10.09.2013 and filed through Wanyama and company advocates.

I have carefully considered the grounds on the face of the application, the contents of the supporting, supplementary and replying affidavits plus the submissions by both Applicant and Mr. Wanyama for the Respondents and find as follows;-

1. That the prayer for temporary injunction cannot be presented and granted in this miscellaneous application which has no other processes that will remain to be dealt with thereafter. Temporary injunctions are issued in instances, for example, where there is a prayer for permanent injunction that will be heard thereafter, or a claim for land, that is to be decided thereafter. Possibly, what the Applicant needed to do was to first seek for the suit in the Lower court to be transferred to this court, and thereafter make his application for temporary injunction. The Applicant is yet to have the Lower court matter transferred to this court and therefore prayer 2 of his application has no basis and must fail.
2. That the Chief Justice practice direction of 9.9.2012 allows the Magistrate's courts to continue dealing with environment and land cases subject to pecuniary jurisdiction. Practice direction number. 7 states;-

**“ Magistrates Courts shall continue to hear and determine all cases relating to the environment and the use and occupation of, and title to land (Whether pending or new) in which the courts have the requisite pecuniary jurisdiction.”**

This position has been reinforced by the decisions of this court in the following matters among others;-

- a. **John Nakhabi Okelo –vs- Oburu Nelson** Busia H C. Misc. App. No.205 of 2012.
  - b. **Sarah Chelagat Samoei –vs- Musa Kipkering Kosgei & Another** .Eldoret E & L C Misc. App. No. 10 of 2013 and
  - c. **Edward Mwaniki Gaturu & Another -vs- Attorney General & 3 others** (2013)eKLR.
3. That in case the lower court was to find that a matter was filed in a court without jurisdiction, then the decision in the case of **Wainaina Njehia –vs- Barclays Bank of Kenya** (2006)eKLR will guide the direction to take . In that case an application seeking to transfer a suit whose value was Kshs.1,600,000/= from the Magistrate's court which did not have pecuniary jurisdiction was dismissed as the matter had been filed in a court without jurisdiction and therefore was a nullity ab initio. This position had earlier been clearly captured in the words of Nyarangi J.A, in the case of **The Owners of Motor Vessel ‘Lilian S’ –vs- Caltex Kenya Ltd** (1989) K.L.R when he observed;

**“ Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs it's tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”**

For reasons set out above, I see no merit in prayer 3 of the application seeking to transfer the Busia CMCC. No. 320 of 2012 from the Lower court to this court. This is because the practice directions issued by the Chief Justice and the decided cases cited above shows the Lower court is clothed with powers to deal with environment and land cases subject to pecuniary jurisdiction. The Applicant's application dated 05.06.2013 is therefore without merit and is dismissed with costs.

**S.M. KIBUNJA,**

**JUDGE.**

**DATED AND DELIVERED ON 27<sup>TH</sup> DAY OF NOVEMBER, 2013.**

**IN THE PRESENCE OF;**

