



**REPUBLIC OF KENYA.**

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

**H. C.C. NO. 0066 OF 2011(O.S)**

**IN THE MATTER OF SECTION 37 AND SECTION 38 OF THE  
REGISTERED LAND ACT (CHAPTER 300 OF THE LAWS OF KENYA).**

**AND;**

**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT (CHAPTER 22 OF THE LAWS  
OF KENYA.**

**AND;**

**IN THE MATTER OF ORDER 37 AND ORDER 51 OF THE CIVIL PROCEDURE RULES, 2010,  
AS MADE UNDER SECTION 81 OF THE CIVIL PROCEDURE ACT (CHAPTER 21 OF THE  
LAWS OF KENYA);**

**BETWEEN;**

**MALALA LUBALE LUVISIA .....APPLICANT**

**VERSUS**

**CHRISPINUS EGESA TANGARA .....1<sup>ST</sup> RESPONDENT**

**JAMES OSEME TANGARA .....2<sup>ND</sup> RESPONDENT**

**JONAI NAMUKURU TANGARA.....3<sup>RD</sup> RESPONDENT.**

**R U L I N G.**

The Applicant, Malala Lubale Luvisia, filed the Notice of Motion dated 1.2.2012 under certificate of urgency through M/S. Manwari & company Advocates . He seeks for inhibition orders in respect of Bukhayo/Ebusibwabo/4216 and 4217 pending the hearing and determination of the suit filed herein through originating summons dated 26.9.2011. The application is based on eight grounds on the application and affidavit in support, sworn by Julius Orina Manwari sworn on 1.2.2012.

The application is opposed through the replying affidavit of Chrispinus Egesa Tangara, the 1<sup>st</sup> Respondent , sworn on 13.7.2012 and filed through M/S. Korongo & company Advocates.

On 30.7.2013, both counsel consented to proceeding with the application through written submission. The Applicant's counsel filed their written submissions dated 16.9.2013 on the same date.

On 9.10.2013 counsel holding brief for Respondent's counsel indicated they would not be filing written submissions and the matter was placed for ruling.

I have carefully considered the grounds on the face of the application, the supporting and replying affidavits plus the submissions by Applicant's counsel and find as follows;-

1. That among the many provisions of the law cited in the heading of the application, only Order 51 of Civil Procedure Rules provides for the procedure. Even though the Applicant filed the application through his counsel, the specific rule in Order 51 of the Civil Procedure Rule that was being relied upon was not specified.
2. That the supporting affidavit was sworn by the Applicant's counsel and contains factual matters which are likely to be contentious and would have been preferable had it been sworn by the Applicant as is the practice in such affidavit.
3. That as the purpose of the application is ensure the status of properties, subject matter of or this suit, are safeguarded or assured and the orders in terms of prayers 1, 2, and 3 were granted on 06.02.2012, I find the same status should continue to obtain for the sake of justice pending hearing and determination of the suit.

For reasons set out above the application dated 01.02.2012 is granted in terms of prayer 6 with costs in the cause.

**S. M. KIBUNJA,**

**JUDGE.**

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