



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
Civil Case 15 of 2012

IN THE MATTER OF THE SUCCESSION ACT CAP. 160 LAWS OF KENYA

AND

IN THE MATTER OF LAND REGISTRATION ACT NO.3 OF 2012

BETWEEN

SALOME MAKOKHA

MURUNGA.....1ST PLAINTIFF

DOMINIC SHIKWARU

ODONGO.....2ND PLAINTIFF

~VRS~

CONSTANTINE OKUMU

NDUMBI.....DEFENDANT/RESPONDENT

LAND REGISTRAR – BUSIA.....1ST

INTERESTED PARTY

MUMIAS SUGAR COMPANY LTD.....2ND

INTERESTED PARTY

RULING

This motion seeks that an order be issued directed at the 2nd Interested Party and all those acting under it to detain the sugarcane proceeds held on Mumias Sugar account no.30330, field no.Elukongo 401/4600, plot no.7 pending the hearing and determination of this suit. The other prayer is that an order be issued directing the 1st Interested Party and all those acting under him to inhibit, prohibit or otherwise restrict any dealings whatsoever in respect of land parcels nos. Bukhayo/Malanga/1312 and Bukhayo/Malanga/1321. The dispute herein is essentially between the Plaintiffs and the Defendant. The Defendant is the registered proprietor of the suit lands since June 1996. It is claimed that she got registered by way of transmission which they contend was done fraudulently as they are the legitimate

heirs to the estate of the deceased John Odongo who died intestate on 25/7/1982. She has apparently grown sugarcane on the suit land and has a contract with the 2nd Interested Party.

Prima facie, the Defendant has an absolute legal claim and entitlement to the suit lands which she can deal with as she wishes. If she is growing sugarcane on the land she would be entitled to the proceeds. To detain the proceed would be to interfere with her right to own, utilize and use the lands.

Secondly, there is no claim that the Defendant wishes to dispose or in any other manner alienate the suit parcels. There would, therefore, be no basis to inhibit or restrict the titles.

The application has no merit and is dismissed. The Defendant and Interested Parties did not defend the application and will therefore not be entitled to costs.

Dated, signed and delivered at Bungoma this 26th day of July 2012.

A. O. MUCHELULE
JUDGE