

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CIVIL CASE NO. 205 OF 2011

LUCAS ONGAKI

ZACHARY OBWOCHA OMANDI APPLICANTS

-VERSUS-

NICHOLAS ATANDI DEFENDANT

RULING

The application/plaintiffs have brought a Notice of Motion application dated 26th September, 2011 seeking the following orders:-

- “1. *THAT this application be certified urgent and be heard on priority basis.*
2. *THAT PENDING the hearing of this application of this application interpartes the defendant/respondent whether by himself or acting through or in consort with his agents/servants or employees be restrained from trespassing into or in any way interfering with the plaintiffs'/applicants' access into, use of, occupation, possession and ownership of the property Kisii Municipality Block III/388.*
3. *THAT PENDING the hearing of this suit defendant/respondent whether by himself or acting through, in consort with his agents, servants or employees be restrained from trespassing into or in any way whatsoever interfering with the plaintiffs'/applicants' access into, use of, occupation of, possession of and/or ownership of the property Kisii Municipality Block III/388.*
4. *THAT the costs of this application be provided for...*”

The application was certified urgent as per prayer 1 above on 30th September, 2011 and an order given for interpartes hearing on priority basis. The application is premised on Order 40 Rules 1 and 2 of the **Civil Procedure Rules** and Sections 3, 3A and 63(c) and (e) of the **Civil Procedure Act**. The applicants have already taken the step of filing a substantive Civil Suit No. 205 of 2011.

The applicants allege that the defendant one, **Nicholas Atandi** trespassed into the suit property namely Kisii Municipality Block III/388 on 4th September, 2011 and chased away the plaintiffs'/applicants' workers who were erecting a fence on the land. He is alleged to have confiscated the plaintiffs/applicants tools, barbed wire and cedar posts. On 20th September, 2011 the defendant is also alleged to have heaped and deposited sand and bricks on the road side near the suit property with the intention of commencing construction.

From the record, an affidavit of service sworn by one, **James Moracha Ntabo** (court process server) the respondent was served with the present application on 4th October, 2011. It is averred that the respondent received the notice but declined to append his signature.

On 11th October, 2011 **Mr. Minda** for the plaintiff/applicants argued the application before me. There was no appearance for the respondents. **Mr. Minda** argued that the applicants are the registered owners of the suit property and that the defendant/respondent had no right over the same. He argued that the acts of trespass by the defendant interfered with the applicants' ownership rights conferred by section 27 and 28 of the **Registered Land Act** (Cap 300, Laws of Kenya). He relied on a certificate of official search for proof of ownership by the applicants.

I have considered the present application, carefully perused all the supporting documents and in the

absence of opposition by the defendant, I allow the application in terms of prayer 3.

Ruling dated, signed and delivered at Kisii this 27th day of October 2011.

R. LAGAT KORIR
JUDGE