



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Civil Suit 72 of 2009**

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF LAND PARCEL NO.NDIVISI/NDIVISI/638

BETWEEN

SAMUEL WANYONYI KUSIMBA APPLICANT/PLAINTIFF

~VRS~

- 1. CALEB TERAH OMURANDA RESPONDENTS/DEFENDANTS**
- 2. EZEKIEL WAFULA KUSIMBA**

RULING

The Applicant Samuel Wanyonyi Kusimba in his application dated 23/9/2009 seeks for several orders:

- 1. That an order of prohibition do issue and be registered on parcel no.NDIVISI/NDIVISI638 for purposes of preserving and stopping further dealings in respect of the said title.**
- 2. That there be stay of proceedings in Bungoma CM CC Nos.166 of 2005 and 658 of 2009.**
- 3. That a temporary injunction do issue restraining the Defendants/Respondents and particularly the first Respondent, their agents, servants and workers from selling, disposing, wasting, cultivating or interfering with the quiet possession and use of land parcel No. NDIVISI/NDIVISI/638 pending hearing and determination of this suit, and that status quo be maintained.**
- 4. That Bungoma CM CC Nos. 166 of 2005 and 658 of 2009 be transferred from the Chief Magistrate Court to this court and consolidate with this suit.**

The application was unopposed by the Respondents. The same was served on C. K. Areba & Co. and Lucy Nanzushi & Co. in their capacity as the advocates for the Respondents in the lower court suits.

The Applicant depones in the supporting affidavit sworn on 23/9/2009 that he is in actual possession, occupation and use of the land in question which facts are in the knowledge of the Respondents. The registration of the land in the names of the Respondents was fraudulent. It is important to restrain the Respondents from selling, cultivating and wasting the land in order to protect the Applicant's rights in this suit. The subject matter in the two suits before the Chief Magistrate is the same in this case thus the prayer for transfer and consolidation of the three suits. According to the Applicants, the Chief Magistrate Court lacks jurisdiction to determine the issues in the said suits.

I have perused the annexed pleadings in CM CC No.166 of 2005 and 658 of 2009. It is evident that the subject matter is Land Parcel Nos.NDIVISI/NDIVISI/638 and that the parties are the same as in this suit. The issues raised herein and in the two suits in the magistrate's court are fundamental to the ownership of the subject matter.

I am convinced that the application before me is merited and I hereby grant the orders sought in terms of prayers 3, 5, 6, 7 and 8.

F. N. MUCHEMI
JUDGE

Ruling dated and delivered this 9th day of June 2010

In the presence of MR Situma for Athunga for plaintiffs.

F. N. MUCHEMI
JUDGE