

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ENVIRONMENT AND LAND CASE NO. E001 OF 2020

GETRUDA ODHIAMBO OWINO.....PLAINTIFF/APPLICANT

VERSUS

ROSA AGUTU RAJULI.....1ST DEFENDANT/RESPONDENT

CHARLES OBONYO.....2ND DEFENDANT/RESPONDENT

IMMACULATE NABWIRE.....3RD DEFENDANT/RESPONDENT

JOHN ODINGA.....4TH DEFENDANT/RESPONDENT

R U L I N G

1. The defence has raised a preliminary objection dated 29th October 2020 stating that;

(a) This suit contravenes the provisions of section 47 of the Law of Succession Act.

(b) The suit contravenes the Land Act which gives the Land Registrar exclusive jurisdiction to entertain trespass disputes.

2. The defendants submit that a certificate of grant was issued in November 2019 setting out mode of distribution and if there is any dispute, the parties ought to resolve the same in the succession file. Secondly that a claim for trespass should be placed before the Land Registrar before filing a case. On her part, the plaintiff submits that the suit herein prays for an order of injunction. That this court has jurisdiction to entertain the claim.

3. A preliminary objection should raise a pure point of law as defined in the case of *Mukisa Biscuits Vs West End Distributors Ltd (1969) EA 696* that which does not require to be ascertained by facts. The defendants state that this suit contravenes the provisions of section 47 of cap 160 which provides thus;

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

4. I have perused the court file and note that the copies of titles filed are in the names of the parties herein. It is not clear from the pleadings how the suit is in breach of provisions of section 47 above. The prayers in the plaint also seeks orders of permanent injunction and cancellation of the suit titles. It is not perse a claim for trespass as stated in the preliminary objection. Consequently, in both grounds of objection, I do not find any merit and I proceed to dismiss the preliminary objection with costs to the plaintiff.

Dated, signed & delivered at BUSIA this 10th day of March, 2021.

A. OMOLLO

JUDGE