



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

MISCELLANEOUS CIVIL APPLICATION NO. 15 OF 2019

1. LEONARD WAFULA WALUBENGO
2. SAMUEL NGAALA MATANDA
3. SAMWEL WANYAMA MASUNGU
4. ISSA BARASA
5. MARIDAH SIMIYU
6. HENRY CHAZINA ZEDECHIA
7. ROSELIDA UPENDO ATUNDO
8. JOSEPH MUKHWANA MULEBA
9. JACOB WANGILA NYONGESA
10. NIXON SENAJU MAGODZI
11. LINET NABWILE KHASA BISANJU
12. AMOS NYONGESA WANYONYI
13. PENUS NYONGESA WANYAMA
14. WASIKE DAVID WANYONYI
15. STEPHEN WEKESA SIFUNA
16. MARK WAFULA KITUI
17. ALFRED TOM SUDI
18. FRANCIS WAFULA DAUDI
19. ERICK KHAKAME KIMUNGUI
20. DANIEL KHAKAME WANYAMA
21. MOSES WASWA MAKHAKA

22. CHARLES NGATI SITUMA
23. HUDSON MURUNGA NAIBEI
24. AXIMILA NABUTUTU KARANI
25. ANTONY M. MULONGO
26. ZAKARIA WANAMI WAFULA
27. DANIEL WAFULA SIMIYU
28. ELIZABETH NASIMIYU
29. LEONARD JUMA SIUNDU
30. GAUDENCIA NABWILE WAFULA.....APPLICANTS

VERSUS

1. MAURICE NABILIKI WATTA
2. MARTIN MASINDE WATTA
3. BERNADETTA NABILIKI
4. RODGERS NYUKURI WATTA
5. ISAAC WATTA VINCENT
6. BERNARD NBANGA WATTA.....RESPONDENTS

RULING

By their amended Notice of Motion dated 28th October 2019, the Applicants herein seek the following substantive orders: -

1. A stay of execution of the eviction orders issued in BUNGOMA CMCC LAND & ENVIRONMENT CASE NO 61 OF 2018.
2. That in exercise of its supervisory function, this Court do call up the record and proceedings in BUNGOMA CMCC LAND & ENVIRONMENT CASE NO 61 OF 2018 to determine;
 - (a) Whether the subordinate Court had jurisdiction over the subject matter.
 - (b) Whether the proceedings by the subordinate Court were conducted in a manner that deprived 41 persons who reside on the suit land. The gist of the application is that the value of the subject matter in BUNGOMA CMCC NO 8 OF 2018 being land parcels NO BOKOLI/MISIKHO/1102 and 1106 exceed the pecuniary jurisdiction of that Court as the said parcels are valued at Kshs. 20 million. Further, that eviction orders have been issued their titles.
 - (c) That BUNGOMA CMCC NO 8 OF 2018 LEONARD WAFULA WALUBENGO & 29 OTHERS .V. MAURICE NABILIKI WATA be transferred to this Court.

The application is supported by the affidavit of LEONARD WAFULA WALUBENGO dated 25th October 2019 and his supplementary affidavit also dated the same day.

The gist of the application is that the value of the subject matter is BUNGOMA CMCC NO 8 OF 2018 being land parcels NO BOKOLI/MISIKHU/1102 and 1106 exceed the pecuniary jurisdiction of that Court as the said parcels are valued at Kshs. 20 million. Further, that eviction orders have been issued by the Chief Magistrate's Court which will affect 41 persons who have titles to portions of the said parcels of land but who were not given any opportunity to be heard.

Though served, the Respondents did not appear or file any response to the application. I however directed that I would consider it and deliver a ruling on the same notwithstanding that it is not opposed.

I must start by stating that there is no appeal before me arising out of the Judgment and decree in BUNGOMA CMCC NO 61 OF 2018. I

have also perused the said file and found that there is a Judgment delivered on 18th January 2019 in favour of **MAURICE NABILIKI WATTA** the 1st Respondent herein and a decree was extracted in the following items to executed against **MARTIN MASINDE WATTA** the defendant therein. The said decree reads: -

“That eviction order is issue against defendant together with his agents, workers, families and anybody who bought land from the defendant to enable the plaintiff share the land to family members L.P NO BOKOLI/MISIKHU 1106 AND BOKOLI/MISIKHU 1102

2 That the defendant do pay costs of this suit.” Emphasis added.

As I have stated above, I have no appeal before me and so I must caution myself into delving into matters that are not properly before me. But I understand the Applicants to be saying that there are 41 persons living on the land in dispute and who have **“valid titles”** to their respective portions. No such valid titles were produced for my inspection but if that is true, then it is strange that they were not enjoined in that suit. Having said so, however, the Applicants invite me to exercise my supervisory jurisdiction to call for the proceedings in **BUNGOMA CMCC NO 61 OF 2018** in order to consider the issues raised in this application. However, that jurisdiction which was previously donated to this Court by **Section 13(5) and (6) of the Environment and Land Court** was removed following amendments vide **Act NO 12 OF 2013**. And **Article 165 (6) and (7) of the Constitution** upon which this application is founded is very specific in that it refers to the High Court. Even if I am wrong on the issue of this Court’s supervisory jurisdiction **BUNGOMA CMCC NO 61 OF 2018** has been heard, finalized and a decree issued. It is doubtful if this Court, unless exercising its appellate jurisdiction, can purport to call for that file to look into the propriety of any orders made therein. I decline the invitation to do so.

With regard to the prayer for stay of execution, again that remedy is only available from this Court under the provisions of **Order 42 Rule 6 of the Civil Procedure Rules** which donates to this Court the power to order a stay of execution pending appeal. There is no appeal before me and therefore there would be no basis upon which to exercise this Court’s powers to order a stay of execution of the decree in **BUNGOMA CMCC NO 61 OF 2018**. I have, nonetheless, upon perusal of the said file noted that there is infact an application for stay filed therein by the 1st and 2nd Respondents herein and some interim orders were granted by **HON. KINGORI (CHIEF MAGISTRATE)** on 10th September 2019 and the inter – parte hearing is coming up on 11th March 2020 before the trial magistrate **HON. S. O. MOGUTE (PRINCIPAL MAGISTRATE)**. Therefore, the prayer for stay is being pursued in the trial Court and is really sub – judice.

Finally, there is the prayer that this Court transfers to itself **BUNGOMA CMCC NO 61 OF 2018** for the reason that the value of the subject matter is Kshs. 20 million and therefore beyond that Court’s jurisdiction. However, **BUNGOMA CMCC NO 612 OF 2018** has been heard to conclusion and a Judgment delivered and therefore it cannot be transferred to this Court. That prayer is not available to the Applicants.

When I engaged counsel for the Applicants of the record in this matter, he seemed to suggest that the only avenue he had was to move to this Court in the manner that he did. His argument was that since the Applicants were not parties in **BUNGOMA CMCC NO 61 OF 2018**, they cannot file an appeal. I think however that they have a window under the review powers of the trial Court donated by **Order 45 of the Civil Procedure Rules** which talks about **“Any person considering himself aggrieved.”**

The up – shot of the above is that the Notice of Motion dated 28th October 2019 as amended on 27th November 2019 is devoid of any merits.

It is accordingly dismissed with no orders as to costs.

Boaz N. Olao.

J U D G E

20th February 2020.

Ruling dated, delivered and signed in Open Court this 20th day of February 2020 at Bungoma.

Mr Milimo for Mr Bulimo for Applicant present

1st Applicant present

Respondent – Absent

Joy/Okwaro – Court Assistants

Boaz N. Olao.

J U D G E

20th February 2020.