



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 305 OF 2017

CHRISTOPHER ASWANI

JACKSON OTOLO

MAURICE MILIKAU MUTULI.....PLAINTIFFS/RESPONDENTS

VERSUS

JOHNSTONE MALOBA ESHIUNYI (DCD).....1ST DEFENDANT

RONALD INGANGA LUDAH.....2ND DEFENDANT/APPLICANT

NASHON OKUSIMBA OMABAYO.....3RD DEFENDANT

RULING

The application is dated 10th January 2020 and is brought under Order 22, Rules 48, 68 and 69 and Order 51 rule 1 of the Civil Procedure Rules, Section 1A, 3A of the Civil Procedure Act together seeking the following orders;

1. That this matter be certified urgent for hearing or priority basis.
2. That the 2nd defendant to be given authority by this honourable court to fully act/represent the Estate of Late Henry Eshihunyi Ong'ong'a (Marama/Buchenya/18) on behalf the 1st defendant (deceased) and 3rd defendant (son to deceased brother of the 2nd defendant) as the administrator until the determination of this suit.
3. That a Prohibitory order be and is hereby issued for stopping the plaintiff's from interfering with the defendant's suit property and the plaintiff's be ordered to restore the boundary back to the disputed boundary spot since the plaintiffs have gone ahead without the help of the certified surveyor to determine/read/translate the boundary maps as directed by the Mediation agreement in mediation No. 423 of 2019 until the determination of this suit.
4. That plaintiffs be compelled/directed to state clearly parties concerned in this suit since on several occasions plaintiffs state different parties who come on board as clearly stated/seen on plaint dated 25th August, 2017 and Mediation No. 423 of 2019 have different parties both are in court records.
5. That this honourable court to provide surveyor and security to oversee/restore/reclaim the stalemate arising from the disputed boundary and report back to this honourable court since all the other avenues to resolve the matter amicably has not had positive results to both parties concerned. First they started from their local Elders, Assistant Chief, Chief and Assistant County Commissioner since the plaintiffs deliberately ignore/assume to follow the legal procedures of their Lands Act of Kenya.
6. That the costs of this application, damages caused on the disputed boundary its environment and all execution proceedings be met by the plaintiffs jointly and/or severally.

It is supported by the annexed affidavit of Ronald Inganga Ludah the 2nd defendant grounds that, on 25th August, 2017, the plaintiff prayed for orders of permanent injunction restraining defendants from interfering, destroying and/or tempering with common boundaries and restoration of the original boundaries of parcels of land better known as L.R. No. Marama/Buchenya/1390, 1392, 102 and 18. The plaintiffs are the ones going against what they prayed for. That the plaintiffs are not willing to resolve this matter. On 14th March, 2019, the defendants filed defence which stands upto date the plaintiffs have willingly not bothered to address this honourable court on matters raised but continues to defy and/or cause unnecessary pressure on the said suit property Marama/Buchenya/18 knowing very well that all the beneficiaries of the said suit property Marama/Buchenya/18 have no locus standi as per attached land search attached on the plaint, to address

this court in regards to the said suit property. The defendants are willing to resolve this matter amicably as indicated by several invitations to the elders, Assistant Chief, Chief, Assistant County Commissioner.

This court has considered the application and the submissions therein. The plaintiffs were served but failed to attend court or file any affidavit in reply. As regards prayer 2 of the application that the 2nd defendant to be given authority by this honourable court to fully represent the Estate of Late Henry Eshihunyi Ong'ong'a (Marama/Buchenya/18) on behalf of the 1st defendant (deceased) and 3rd defendant (son to deceased brother of the 2nd defendant) as the administrator until the determination of this suit, no letters of administration and or grant have been produced to confirm that the applicant is the administrator and hence this prayer cannot be granted. On the grants of prohibitory orders, security, damages and so on, the defendant has not filed any counterclaim and these appear to be final orders and cannot be granted at this interlocutory stage. I find this application is misconceived and an abuse of the court process and it is dismissed with no orders as to costs as the same was undefended. Since mediation seems to have broken down this matter is to proceed to full hearing.

It is so ordered.

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF APRIL 2020

N.A. MATHEKA

JUDGE