

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO.649 OF 2009

IN THE MATTER OF THE ESTATE OF WELLINGTON NYANGULE MULAMA – DECEASED

WILKISTER SHIUNDU MALILO..... APPLICANT

VERSUS

JOHN LUSWETI

ASMAN HALAMBEE KWEYU

EMMANUEL AMAKOBÉ.....RESPONDENTS

RULING

1. The petitioner/applicant herein Wilkister Shiundu Malilo has filed a notice of motion dated 7th November, 2016 seeking for orders that the three respondents – John Lusweti, Asman Halambée Kweyu and Emmanuel Amakobe Kweyu - be evicted from land Parcel No. Marama/Shinamwenyuli/1225 and give vacant possession to the petitioner.

2. The grounds in support of the application are that the petitioner is the sole proprietor of the suit land. That the respondents have encroached on the suit land without the consent/knowledge of the applicant.

The respondents were served with the application but they did not file any response.

3. I have perused the court file and I have noted that the matter is pending hearing of a dispute between the petitioner and two other parties – Benson Miller Sakwa Wakhole and Sarah Nyangala Mukolwe. Sarah has already testified in the case. There are statements of her witnesses in the court file. One of the statements is that of Asman Alambee Kweyu who alleges that he bought his portion of land from Sarah Nyangala Mukolwe. The petitioner cannot thereby evict the said Asman Alambee Kweyu before her case with Sarah Mukolwe is over.

4. The other statement in the court file is that of Emmanuel Malala Amakobe. I do not know the relationship of the said person and Emmanuel Amakobe Kweyu or whether it is the same person. Emmanuel Malala Amakobe says that he bought his parcel of land from Sarah Nyangala.

I have not seen any statement of John Lusweti.

5. The three respondents were served with the application dated 7th November 2016 but they did not file a response. There is no reason why John Lusweti is in occupation of the petitioner's land. I thereby allow the application against him and order that he be evicted 14 days after service of the order.

The application against Asman Halambée Kweyu and Emmanuel Amakobe Kweyu is allowed but the execution of the orders is to await the outcome of the dispute between the petitioner and Benson Miller Sakwa Wakhole and Sarah Nyangala Mukolwe. However, if the petitioner loses the case against the other two, the application will stand dismissed.

Orders accordingly.

Delivered, dated and signed at Kakamega this 5th day of April , 2017.

J. NJAGI

JUDGE