



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

LAND AND ENVIRONMENT CASE NO. 150 OF 2015

ESINAS OLESHA ESERE.....1ST PLAINTIFF

EVANS VUHASHO ESERE.....2ND PLAINTIFF

VERSUS

JORAM SAMBASI.....1ST DEFENDANT

JAIRUS ALAKONYA.....2ND DEFENDANT

DICKSON OMBANYA.....3RD DEFENDANT

FRED BARASA KHWATENGE.....4TH DEFENDANT

ABRAHAM WEKESA.....5TH DEFENDANT

BOAZ MUTINYI.....6TH DEFENDANT

SOITA BARAZA.....7TH DEFENDANT

PHILIP MAKOKHA SIRENGO(son of Neddy Sirengo).....8TH DEFENDANT

DANIEL ASIRA.....9TH DEFENDANT

PETER FORD.....10TH DEFENDANT

JACOB FORD.....11TH DEFENDANT

WAFULA MAKOKHA(SON OF ROSE NASWA).....12th DEFENDANT

ERUSTUS WANJALA.....13TH DEFENDANT

KEVIN BARASA(son of Fred Barasa Khwatenge).....14TH DEFENDANT

TITO BARASA(nephew to Fred Barasa Khwatenge).....15TH DEFENDANT

GEORGE MATENE.....16TH DEFENDANT

KENNEDY MASINDE.....17TH DEFENDANT

NEDDY NANYAMA SIRENGO(wife to Benjamin Sirengo)..18TH DEFENDANT

ROSE NASWA(WIFE TO MAURICE MAKOKHA).....19TH DEFENDANT

BABIE BARASA(WIFE TO AGGREY BARASA).....20TH DEFENDANT

MRS MUKONAMBI.....21ST DEFENDANT

JOSPHINE BARASA.....22ND DEFENDANT

SARAH KHAELI SIRENGO.....23RD DEFENDANT

RULING

[1] The applicant brings this application under Order 40 Rule 1,3 and 4 and Order 51 Rule 1 of the Civil Procedure Rules 2010 and Section 1A, AB 3A and 63 (c) and (e) of the Civil Procedure Act Cap 21 Laws of Kenya.

He prays for a permanent injunction to issue restraining the defendants either by themselves or through their agents, servants, employees and/or representatives or any other person or group from trespassing into, entering into, wasting, digging or cultivating or grazing on, clearing, excavating, fencing erecting any structure and from interfering with the plaintiffs quiet enjoyment and possession of the suit land pending the hearing of this application and that the order be enforced by the officer commanding Malinda Police Station and/or the Assistant County Commissioner of Likuyani county.

[2] The applicant swore that he is the absolute proprietor of land titles Kakamega/Nzoia/304, 10/114 and 305 and has been issued with title deeds in proof of ownership thereof. He avers that the defendant/respondents unlawfully, arbitrary and/or without any legal justification trespassed into and/or invaded into the suit land, demolished and burnt the plaintiffs houses, vandalized and stole plaintiffs properties, harassed, threatened and illegally evicted the plaintiffs and their families from the suit land and thereafter unlawfully occupied and took possession of the suit land.

[3] The applicant states that currently the defendants have taken possession of the land and are illegally grazing on it, cultivating on it excavating on it, felling down trees and selling timber firewood burning charcoal, and destroying the fence. That they have continued to do so with impunity, arbitrarily, unlawfully and/or without any legal justification thereby gravely violating the plaintiffs' quiet enjoyment and peaceful possession of the suit land.

The applicant avers that by the plaintiffs' invasion, they have lost their home and are completely denied user of their land. They aver that this is a fundamental breach to their constitutional right to protection of private property envisaged in article 40 of the Constitution of Kenya 2010.

[4] During the hearing there was no appearance by Rioba Omoto and Co. for 4th, 5th, 6th, 7th,14th, 17th and 20th respondent. The said advocate was duly served, Mr. Watanga advocate appeared for 9th, 18th and 23rd defendants. Mbuluma & Co. for 3rd defendant did not attend the court they were also served. There was no appearance for Chepseba & Co. Advocates who were on record for 2nd, 9th, 10th, 11th, 12th, 13th, 19th and 20th respondents. They were also served. Mr. Watanga for 8th, 18th and 23rd defendant respondent said that his clients had nothing to do with the plaintiffs land Kakamega/Nzoia/304 and 114 since they have their own settlement lands in Scheme No. 137 And for those reasons he said he does not oppose the application. Mr. Makhanu told the court that his application was not opposed. It had been

duly served and that there was a return of service. He relied on Machakos ELC No. 235 of 2014 and the Court of Appeal Civil Appeal No. 121 of 2005.

This notice of motion is not opposed. I allow it in terms of prayer 2 pending the hearing of the suit interpartes with costs to the applicant.

Dated at Bungoma this 11th day of May 2016.

S.MUKUNYA - JUDGE

Ruling read in open court in presence of

Mr. Musumba for Makhanu for applicant

Mr. Watanga for Mr. Makhanu for the respondent

S.MUKUNYA - JUDGE

11/5/2016