



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**CIVIL CASE NO. 53 OF 2002**

**SAMUEL OWUOR OUMA..... 1ST PLAINTIFF**

**MARY ANYANGO OUMA..... 2ND PLAINTIFF**

**THOMAS OSIR OUMA..... 3RD PLAINTIFF**

**GERALD OLUOCH OUMA ..... 4TH PLAINTIFF**

**VERSUS**

**EPAINO FURUKHA SUMBA..... DEFENDANT**

**AND**

**BENEDICT MASINDE WAWIRE.....AGGRIEVED PARTY/APPLICANT**

**RULING**

[1].The appellant, an aggrieved party filed this application praying for a temporary stay of execution of the judgment herein. He also prayed that this court to review and set aside its order or judgment delivered on 26.6.14. The applicant contends that the order cancelling land parcel number East Bukusu/S. Kanduyi/9276 and thereunder directing the Land Registrar Bungoma to register the plaintiffs as joint owners of the suit parcel be set aside. He argued that there is an error apparent on the face of the record. The error according to the aggrieved party is that he was not a party to the suit and he is the registered proprietor of E. Bukusu/S. Kanduyi/9276 having bought the said land in 1991 for kshs. 130,000/= and subsequently being registered on 15th October 2002. He attached his title deed dated 15th October 2002.

[2].The application was opposed by the respondents vide an application of Samuel Owuor Ouma who admits that the applicant is the registered proprietor of land parcel E. Bukusu/S. Kanduyi/9276 but argued that the appellant's registration of the said land was a ploy to defeat the respondents claim of adverse possession. The respondent argues that the defendant in this case had no proper title to transfer to anyone else. That the judgement herein is subject to an appeal in the Court of Appeal number. 15 of 2014 which appeal is still pending and that the issues pending in that appeal are similar to the issues in the current application. The respondent attached a copy of the memorandum of appeal filed in court on 14th August 2014.

[3].The plaintiffs filed an originating summons no. 53 of 2002 on 21.3.2002. They prayed to be declared owners of a piece of land measuring 118ft by 100ft to be carved out of land parcel numbers E. Bukusu/S.

Kanduyi/9276 and 75. They alleged they had acquired title by adverse possession having occupied the said land for over 25 years. They urged the court to declare them owners for the 118 x 100ft piece of land by virtue of Sections 7, 17 and 38 of Limitations of Actions Act.

[4]. There are some troubling mathematical statistics about the plaintiffs occupation for 25 years of the piece of land claimed.

Samuel Owuor Ouma was 10 years old in 1977. He was therefore born in 1967. By the time the suit was filed in 2002 he was 35 years, Therefore, if he had been on the land for 25 years by the filing of the suit, he started acquiring it by adverse possession when he was 10 years old. By the same argument, Thomas Osir Ouma who was 8 years in 1977 was 33 years in the year 2002 when the suit was filed. If he also had stayed on the land for 25 years on filing the suit, he started acquiring the land when he was 8 years old.

Jared Ouma was born in 1984. He was only 18 years in 2002. He could therefore not have stayed on the suit land for 25 years. These are just arithmetical calculations from the proceedings.

[5]. It appears that the aggrieved party/applicant was the registered owner of the land in 2002. He was not named in the proceedings. He was not served with any papers. There are green cards in the court file showing him as the registered proprietor of E. Bukusu/S. Kanduyi/9276.

He should have been made a party to the suit. He is adversely effected by the judgment herein. He was condemned unheard. The appeal filed herein affords him no relief. He was not a party to those proceedings and has no way of recognition in the appeal. His only way to come into this case is by way of the application that he has filed. The issues the applicant raises in his application herein, in some way are also issues between the parties to this case in the appeal now pending in the Court of Appeal.

[6]. The determination of that appeal by the Court of Appeal may render the issue of

review and setting aside judgment requested by the applicant in this court unnecessary. I will therefore make no orders in that regard.

Now that the appeal has been brought to my notice, I will order that a stay of execution shall issue pending the hearing and final determination of the appeal aforesaid.

These are the orders of the court.

**DATED, SIGNED and READ** in open court this 4<sup>th</sup> day of May 2015.

**S. MUKUNYA**

**JUDGE**