

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND & ENVIRONMENT CASE NO.176 OF 2014

BUNGOMA TEACHERS SACCO LTD

ALIAS NGARISHA SACCO LTD.....PLAINTIFF/APPLICANT

VERSUS

HON. ATHANUS WAFULA WAMUNYINYI....DEFENDANT/RESPONDENT

RULING

The applicants in this case brought this application under certificate of urgency on 24th of September 2014. They prayed for an order of injunction against the defendant respondent restraining the defendants by himself, his servants and workers and/or authorized agents supporters from forcefully entering into and remaining onto or pulling down perimeter barbed wire fence erected around by the Plaintiffs on parcel Bungoma / Municipality /807 808, 809, 810 and 811 now plots numbers Bungoma Municipality 859-878 altogether 20 plots.

The applicant avers that those plots have been subject to various litigation in Bungoma HCC Nos.143, 144, 145 and 146 of 2011 Between Bungoma County Government and the applicant herein. These suits were consolidated into one in Bungoma HCCC No.143 of 2011. The suit was determined in the applicants favour on 13/05/2014.

When this matter came before the Court on 29/4/2014 the same was certified urgent. On 6/10/2014 the Court gave the respondent time to respond to the application and the applicant was given corresponding leave to file a reply. On 21/10/2014 the respondent filed his grounds of opposition.

On 11/3/2015 I granted the respondent leave to file the replying affidavit within 14 days and also to file his written submissions.

Again on 5/5/2015 I gave respondent leave to file his written submissions none was filed.

This Court A. Omollo J, had struck out Municipal Council of Bungoma's suit wanting to have the applicants titles cancelled.

It is quite apparent therefore that as at this stage the defacto owners of the suit lands is the applicants.

On the balance of convenience I grant the applicants prayer No.3 of the Notice of Motion dated 24th of September 2014 a permanent injunction shall issue against the respondent in terms prayed in Prayer 3 of the Motion.

The costs of this application shall abide with the judgement of this Case.

Dated at BUNGOMA this 10th day of June, 2015

S. MUKUNYA

JUDGE