



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 89 OF 2019**

**ANDREW OPONYO MULAMA**

**EDWARD MAKANJI MULAMA.....APPLICANTS**

**VERSUS**

**SAMUEL OMULAMA AMAKANJI**

**VINCENT NYANGA.....RESPONDENTS**

**RULING**

The application is dated is dated 14<sup>th</sup> September 2020 and is brought under rule 2 (2) b & 3 (2) of the High Court Practice and Procedure Rules of the Judicature Act Section 3 and 3A of the Civil Procedure Act and Order 51 rule 1 of the Civil Procedure Rules seeking the following orders;

1. That this matter be certified as urgent and be heard during the summer vacation of the High Court and service in the first instance.
2. That an order be and is hereby issued to the respondents to give the plaintiffs access to water and or the river by pulling down the fence in that parcel of land known as Kisa/Emaitsi/83 pending the hearing and determination of this suit.
3. That the respondents be and are hereby ordered to comply with the orders herein granted on 2<sup>nd</sup> December, 2019 failure to which they will automatically be cited for contempt of court orders.
4. That the costs of this application be provided for.

It is based on the affidavit of Andrew Oponyo Mulama and grounds that this honourable court issued orders on the 1<sup>st</sup> December, 2019 that the respondents should not dispose off the subject property known as pending the hearing and determination of this suit. That all has been well until the 1<sup>st</sup> respondent sold some of the suit property and whereby the alleged sellers brought in by the 1<sup>st</sup> respondent have now occupied some of the said land. That the 1<sup>st</sup> respondent has now fenced off part of the said land and thereby denying the applicants access to the river and water which is their main source of water and as a result the applicants are suffering without water. That the respondents have disobeyed and disregarded the said order dated 2<sup>nd</sup> December, 2019. That if the orders sought are not granted the objectors stand to suffer irreparable harm and damage and the suit herein will be rendered null and void as the respondent is in the process of selling and surveying the said property further that the applicants cannot access water.

The respondents submitted that the area chief under whose jurisdiction plot 83 is situated has written the letter marked herein as exhibit 'SOA 2' confirming that the applicants, contrary to their assertions, are indeed able to access water from the river and the fence is not an impediment at all. That the fence in question herein is one which he put up demarcating his share of plot 83 following a family meeting held on the 17<sup>th</sup> day of April, 2019 as confirmed by the minutes thereof and a letter from the area chief marked as exhibits 'SOA 3 and 4'. That after the family meeting held on the 17<sup>th</sup> day of April, 2019, he sold his entire portion to the 2<sup>nd</sup> respondent on the 30<sup>th</sup> day of August, 2019 as the relationship between the applicants and him was not cordial. Annexed as exhibit marked 'SOA 5' is a copy of the sale of land agreement. That as at the time the consent order was issued on the 2<sup>nd</sup> day of December, 2019, he had already disposed of his portion to the 2<sup>nd</sup> respondent but in compliance to the said order, he has been restrained from formally transferring this portion to him.

This court has carefully considered the application and the submissions therein. The applicants submitted that the 1<sup>st</sup> respondent sold some of the suit property and whereby the alleged sellers brought in by the 1<sup>st</sup> respondent have now occupied some of the said land. That the 1<sup>st</sup> respondent has now fenced off part of the said land and thereby denying the applicants access to the river and water which is their main source of water and as a result the applicants are suffering without water. That the respondents have disobeyed and disregarded the said court order dated 2<sup>nd</sup> December, 2019. The respondents submitted that the area chief has written the letter marked herein as exhibit 'SOA 2' confirming that the applicants, are indeed able to access water from the river and the fence is not an impediment at all. That the fence in question herein is one which he put up demarcating his share of plot 83 following a family meeting held on the 17<sup>th</sup> day of April, 2019 as confirmed by the minutes thereof and a letter from the area Chief marked as exhibits 'SOA 3 and 4'. That after the family meeting held on the 17<sup>th</sup> day of April, 2019, he sold his entire portion to the 2<sup>nd</sup> respondent on the 30<sup>th</sup> day of August, 2019. I find that contempt has not been established in this matter and allegations contained in this application will have to be established by way of evidence. The applicants are well advised to take an early hearing date in this matter. I find that this application is not merited and I dismiss it. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 27<sup>TH</sup> OCTOBER 2020.**

**N.A. MATHEKA**

**JUDGE**