

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 105 OF 2019

JOSIKA MWARO ANYEMBE

KASIM CHAKA MASAKHWA.....PLAINTIFFS/APPLICANTS

VERSUS

JACK NANDI OKWAYO

BENARD MAUMO ANYANJE.....DEFENDANTS/RESPONDENTS

RULING

The application is dated 21st September 2020 and is brought under order 51 rule 1 Section 1A, B and Section 3A of the Civil Procedure Act order 40 rule 1-5 and section 159 of the Constitution of Kenya 2010 seeking the following orders:

1. That this matter be certified as urgent and be heard exparte in the 1st instance and be dispensed with.
2. That pending hearing and determination of this application/suit inter parties, the defendant Jack Nandi Okwayo, Benard Maumo Anyongo and or any other person purporting to act for them in whatsoever manner touching on the land parcel No. South/Wanga Buchifi/2405 and 2406 a subdivision of land parcel No. South Wanga Buchifi/359 the subject matter of this suit be restrained from alienating, subdividing and or transferring the same to any third party.
3. That pending hearing and determination of the suit the status quo prevailing on the ground touching land parcel No. 2405 and 2406 as at the time the suit was filed and transferred to be heard at Kakamega High Court be maintained to preserve and maintain the titles from being transferred and subdivided further.
4. That this honourable court do exercise its inherent powers to issue such orders of reversal as it deems fit in any event should the said land parcel No. South/Wanga Buchifi/2405/2406 be transferred, subdivided, wasted during the pendency of the main suit to any third party intending to defeat justice.
5. That costs of this application be provided for against the defendants.

It is grounded on the affidavit of Josika Mwayo Anyembe the plaintiff/applicant and the grounds that the suit is still pending in the court upon transfer from Mumias Law Courts to be heard and determined by the High Court in Kakamega. That the suit land parcel No. South/Wanga Buchifi/2405 and 2406 is subject of dispute and ownership which matter has not been determined by the court. That the defendants are in the process of surveying the said parcel of land causing subdivision transfer to third parties intending to change the title and face of land parcel No. South/Wanga Buchifi/359 which exercise is dated on 22nd September, 2020 which needs to be stopped. That the intended transfer is geared to circumvent the due process of law and or defeat justice and make the current suit as academic exercise and waste of the judicious courts time by issuing orders in vain. That justice demands the matter be fast tracked and be heard and be determined on merit without shortcuts being employed by the defendants who are in the process of disposing the parcel of land to third parties.

This court has considered the application and the submissions therein. The applicants submitted that the suit land parcel No. South/Wanga Buchifi/2405 and 2406 is subject of dispute and ownership which matter has not been determined by the court. That the defendants are in the process of surveying the said parcel of land causing subdivision transfer to third parties intending to change the title and face of land parcel No. South/Wanga Buchifi/359 which exercise is dated on 22nd September, 2020 which needs to be stopped. No documentary evidence has been adduced to prove this assertion. The applicants are advised to take an early hearing date. This application is not merited and is dismissed. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 27TH OCTOBER 2020.

N.A. MATHEKA

JUDGE