



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 32 OF 2013.

1. JAMES KURIA WAIRAGU
2. JOSEPH NGUNGU GITU
3. MILLICENT WAKONYO
4. MARY WANJIRU JOSEPH
5. SAMWEL NJENGA NDUNGU
6. DUNCAN GITU NDUNGU
7. JOHN GIBSON MWANGI KIMARI
8. STEPHEN MAINA KANJURU

9. TERESIA WAMBUI MAINA.....PLAINTIFFS/APPLICANTS

=VERSUS=

1. TRANSITION AUTHORITY

2. BUSIA COUNTY.....DEFENDANTS/RESPONDENTS

RULING.

JAMES KURIA WAIRAGO, JOSEPH G. NDUNGU GITU, MILICENT WAKONYO, MARY WANJIRU JOSEPH, SAMWEL NJENGA NDUNGU, DUNCAN GITU NDUNGU, JOHN GIBSON MWANGI KIMARI, STEPHEN MAINA KANJURU and TERESIA WAMBUI MAINA, hereinafter referred to as the 1st to 9th Applicants filed the Notice of Motion dated 16th May, 2013 under certificate of urgency against *Transition Authority* and *Busia County*, hereinafter referred to as the 1st to 2nd Respondent for temporary order of injunction from “entering , digging. ploughing, leveling, excavating, constructing a parking area, position tractors or other machinery or in any other manner whatsoever from using or interfering with the Plaintiffs rights on land parcels Nos. Bukhayo/Bugengi/3643, 3644, 3645, 3647, 3081, 3078., 3077, 3079, 3080, 1604 and 2789 pending the hearing and final determination of this suit ” and costs. The application and the supporting and supplementary affidavits of James Kuria Wairagu (1st Applicant) sworn on 16th May, 2013 and 5th July, 2013 respectively.

The application is opposed by the Respondents through Bogonko Otanga & company advocates

dated 23rd May, 2013. The Attorney General through the Senior Principal Litigation Counsel later came on record for the 1st Respondent and filed grounds of opposition dated 17th September, 2014.

When the application was placed before this court on 20th May, 2013, the court certified it as urgent and directed it be served for hearing on 23rd May, 2013.

The counsel for the parties appeared before the court on 23rd May, 2013 and temporary orders were issued, Respondents granted 21 days to file replying papers and further interpartes hearing fixed for 13th June, 2013. On that day the hearing was rescheduled to 10th July, 2013 on application of the Applicants and again moved to 16th September, 2013. On the 16th September, 2013, counsel informed the court that they were negotiating and the matter was placed for mention on 15th October, 2013.

The counsel then filed a written consent dated 17th October, 2013 which was entered in the court record on 31st October, 2013 allowing the application. This was followed by another consent dated 3rd June, 2014 setting aside the consent of 23rd April, 2014, withdrawing the replying affidavit sworn on 10th June, 2013 by Redempta Oyeyo and reinstating the interim orders that were in force as at 23rd May, 2013 among others.

The court has severally extended the time for the parties to file additional replying papers to the application and on the 6th October, 2014, counsel for the 2nd Respondent indicated they were not filing any further replying papers. The court then heard the submissions of Mr. Onsongo for the Applicants and Mr. Makokha for the 2nd Respondent.

The court has carefully considered the grounds on the application, supporting and supplementary affidavits, grounds of oppositions and submissions by counsel and find as follows:

1. That the Applicants have exhibited copies of title documents to the suit lands and extract of a parliamentary debate that clearly shows the Applicants have a prima facie case and have therefore complied with the requirements set out in **GIELLIA –VS- CASSMAN BROWN** before issuance of temporary injunctive orders.
2. That the 1st and 2nd Respondents are entitled that can sue or be sued under the provisions of Devolved Government Act Cap 265 A and County Government Act Cap 265 of Laws of Kenya respectively.
3. That for reasons set out above, the application dated 16th May, 2014 is allowed in the following terms;
 - a. That temporary injunction is hereby issued against the Respondents, their servants, employees, contractors, agents or persons working under them or under their instructions from interfering with the Applicants rights as registered proprietors of the suit lands, Bukhayo/Bugengi/3643, 3544, 3645, 3647, 3081, 3078, 3077, 3079, 3080, 1604 and 2789 pending the hearing and determination of this suit.
 - b. That the costs of this application be in the cause.
 - c. That so as to avoid further delay in this matter, the court on its own volition gives the following directions.
 0. That the Plaintiff do file and serve any outstanding evidence affidavits and lists of documents in 30 (Thirty) days from today.
 0. The Defendants do file and serve evidence affidavits and list of documents in 30 (Thirty) days after service.
 0. That the matter be mentioned in January, 2015 to confirm compliance and fix a hearing date.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 5th DAY OF NOVEMBER, 2014.

IN THE PRESENCE OF; Mr. Onsongo for Applicants, Mr. Onyiso for 1st Respondent and Mr. Makokha for 2nd Respondent.