

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

ELC. CASE NO. 38 OF 2014.

ERASMAS SASAKA WACHILONGA.....PLAINTIFF

VERSUS.

SIMON WACHILONGA TOLI.....1ST DEFENDANT

MARGARET K. WACHILONGA.....2ND DEFENDANT

MAGDALENE MBAYISI.....3RD DEFENDANT

EVERLYNE NEKESA WACHILONGA.....4TH DEFENDANT

RULING.

[1]. This application is made under rule 2(2) (a) & 3(2) of the high court practice and procedure Rules and Sec 13(7) (a) of the Environment and Land Act and Sec. 3A of the Civil Procedure Act. The applicant prays that this court restrains the plaintiff and Auctioneer from carrying out the execution of the order issued by the Deputy Registrar on 5th day of July 2017 and that the court do order a stay of execution of the Judgment delivered on 29/11/2017 pending the outcome of summons to revoke the grant dated 13/3/2017.

[2]. The respondent opposes this application and claims that the court is functus official further that the court has no jurisdiction to grant the order sought in the application. That this case is concluded and that the provisions invoked by the applicant are wrong.

[3]. I agree with the sentiments of the defendant. The Judgment herein was handed down on 29/11/2016. This court is functus official and cannot entertain the application filed. The same is dismissed with costs.

Judgment read in Open Court in the presence of Mr. Kweyu.

Dated at Bungoma this 10th day of January, 2018.

S. MUKUNYA

JUDGE

In the presence of:

Chemutai - Court Assistant

Mr. Kweyu for Plaintiff

Wesutsa & Co. for the Defendant