



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT MIGORI**

**ELC CASE NO. 284 OF 2017**

**CAREN ATIENO AGIDA.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**KENNDY ODHIAMBO NYAORO.....2<sup>ND</sup> PLAINIFF/RESPONDENT**

**VERSUS**

**ELISHA JABUYA OLWERU.....DEFENDANT/APPLICANT**

**RAYMOND OBACHI.....INTERESTED PARTY/RESPONDENT**

**RULING**

1. By a Notice of motion dated 11/5/2017, the defendant/applicant represented by Kirui Advocate, seeks the following orders;-

**a) This application be certified a urgent and heard ex-parte in the first instance.**

**b) The Honourable court be pleased to grant temporary injunction restraining the respondents, by themselves, their agents servants, employees or any other representative working under their instructions from trespassing onto, fencing destroying property therein or interfering with land parcel No. KANYADA/KATIENO/KATUMA/A/2246 in any manner inconsistent with the applicant's right or interest pending the hearing and determination of this application.**

**c) The Honourable court be pleased to grant temporary injunction restraining the respondents, by themselves, their agents servants, employees or any other representative working under their instructions from trespassing onto, fencing destroying property therein or interfering with land parcel No. KANYADA/KATIENO/KATUMA A /2246 in any manner inconsistent with the applicant's right or interest pending hearing and determination of the main suit.**

**d) Costs of this application be provided by the respondents.**

2. The grounds of the application are :-

i. **THAT** the defendant /applicant deceased father OLWERU OKETA was the legal proprietor of land parcel No. KANYADA/KOTIENO/KATUM/A/2246, after fraudulent and secret succession and sub-division of land parcel No. KANYADA/KOTIENO/KATUMA A/845 by the 2<sup>nd</sup> respondent. Annexed and marked hereto "EJO1 A copy of the mutation.

ii. **THAT** both my parents OLWERU OKETA and PAKALIA OMOLLO OLWERU all deceased's were buried in the suit land.

iii. The 2<sup>nd</sup> respondent herein has maliciously and without any color of right whatsoever sold the whole parcel of land to the 1<sup>st</sup> respondent and the matter is pending in this honourable court.

iv. The 2<sup>nd</sup> respondent has a portioned 2 acres thereof to the interested party herein, who represented him in a civil matter at Kisii High court same being No. 234 of 2013 of the same subject matter.

v. The interested party herein new the pendency of the said suit and has now turned against the applicants suit land thereby interfering with the land by fencing a portion thereof claiming same as part of his fees from the 2<sup>nd</sup> respondent.

vi. The 1<sup>st</sup> respondent is also threatening to fence the suit land.

vii. The respondent are interfering with the applicant's quite possession and use of the suit land herein.

viii. The applicant has stayed in the suit land well over 50 years without any interference whatsoever.

ix. This is a fit and proper application to be allowed.

3. The defendant /applicant's learned counsel Mr. Kirui has applied to the court to have the application marked as abonded or withdrawn. The request is not opposed and merited.

4. In Salat –v- IEBC & 7 other (2014) KLR-SCK it was held, inter alia;

**“ A party's right to withdraw a matter before the court cannot be taken away. A court cannot bar a party from withdrawing his matter.”**

5. I accordingly order the application marked as withdrawn with no orders as to costs as it the right of plaintiff to withdraw the matter herein.

6. Final chance to the parties to com0ly with Order 11 Civil Procedure Rules, 2010, granted.

7. Mention for pre-trial directions on 14/3/2018.

8. The defendant's counsel to serve the plaintiffs' counsel accordingly.

**G.M.A. ONGONDO**

**JUDGE**

**DELIVERED, SIGNED and DATED** in open court at MIGORI this **1<sup>st</sup> day of February 2018.**

**G. M. A. ONGONDO**

**JUDGE**

**In the presence of:**

Mr. G.S. Okoth counsel for the plaintiff

Mr. Kirui counsel for the defendant

Josephine Oloo -Court assistant

**G. M. A. ONGONDO**

**JUDGE**

**01/2/2018**