



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 31 OF 2009

NAHASHON OCHIENG ONYANGO.....PLAINTIFF

VERSUS

FLORENCE MWANIKI ONYANGO.....1ST DEFENDANT

HENRY OTIENO.....2ND DEFENDANT

BERNARD OSORE.....3RD DEFENDANT

BENJAMIN OSENGO.....4TH DEFENDANT

PHILIP OPIYO.....5TH DEFENDANT

PETER GATIMU.....6TH DEFENDANT

EVERLYNE WANYAMA.....7TH DEFENDANT

JOHN SIMIYU.....8TH DEFENDANT

HALLIN WANYAMA.....9TH DEFENDANT

MARY PETER.....10TH DEFENDANT

ALICE WANYONYI.....11TH DEFENDANT

EVERLYNE SIMIYU.....12TH DEFENDANT

RULING

1. The application dated 20/11/2017 seeks the following orders:-

(1) An injunction to maintain the status quo and/or a stay of execution of the orders made on 24/8/2017 pending the hearing and determination of the intended appeal against the Ruling and Order made by this court on 24/8/2017.

2. The orders granted on 24/7/2017 allowed a raft of prayers in the application dated 7/4/2017. In that Ruling, I gave the history of the matter and observed that the consent order that led to the subdivision of the land has never been set aside.

3. It is now trite that consents between parties can only be set aside by way of a suit in which various grounds which would justify **setting** a contract **aside**, for example fraud or misrepresentation would have to be proved to warrant such setting aside.

4. No draft Memorandum of Appeal is annexed to the application and this court is unable to gauge the intended appeal in order to assess the probability of its success for the purpose of considering the injunction or stay orders sought.

Bearing in mind that even now the consent still subsists and no challenge has been mounted against the same, I find no good grounds to grant the current application. Consequently I dismiss the application dated **20/11/2017** with costs to the respondent.

Dated, signed and delivered at Kitale on this **20th** day of **March, 2018**.

MWANGI NJOROGE

JUDGE

20/3/2018

Coram:

Before - Mwangi Njoroge - Judge

Court Assistant - Picoty

Mr. Litunya holding brief for Atudo for plaintiff

Ms. Bett holding brief for Ingosi for 1st, 3rd and 4th defendants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

20/3/2018