



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**ENVIRONMENT & LAND CASE NO. 44 OF 2017.**

**MARY WEKESA WALUMOLI**

**alias MARY N. WANYONYI.....PLAINTIFF**

**VERSUS.**

**THE CHIEF OFFICER LANDS.....1<sup>ST</sup> DEFENDANT**

**THE SUB COUNTY ADMINISTRATOR.....2<sup>ND</sup> DEFENDANT**

**THE COUNTY GOVERNMENT OF BUNGOMA.....3<sup>RD</sup> DEFENDANT**

**RULING.**

[1]. The applicant filed this Notice of Motion on 15/3/2017. No rules of procedure were quoted in that application. The applicant prays that the Chief Officer Lands, the Sub County Administrator and the County Government of Bungoma be restrained from further construction, working, building, digging and erecting structures on Plot No. 4 Tongaren Market pending the hearing and determination of this application and the suit.

[2]. The application is opposed by the defendants who have filed grounds of opposition on 24/4/2017 and stated that the applicant has not proved any proprietary or equitable right on the suit property to warrant the orders sought, further that the applicant has not furnished the court with the allotment Letter, lease and/or certificate to prove ownership. It is also argued that the minutes attached by the applicant are not certified and that there are no photographs and/or report to show how the respondents have encroached the parcel complained about.

[3]. I have perused the application and the annexures. I have equally perused the plaint filed herein by the applicant dated 15/3/2017. The plaint claims in paragraph 10

*“The plaintiff claims against the defendant is for a permanent injunction and any structure erected by the defendant herein be demolished”*

It is therefore plain that the application herein and the suit claim for exactly the same thing. Determining this application will mean determining the suit at a preliminary stage without hearing the parties. This will not be in the interests of justice.

I order that this suit be fixed for hearing on merits to enable the parties to fully canvass the issues raised herein. The end result is that the application is dismissed with no order as to costs.

Ruling read in Open Court.

**Dated at Bungoma this 4<sup>th</sup> day of October, 2017.**

**S. MUKUNYA**

**JUDGE.**

**In the presence of:**

Court Assistants: Chemutai/Joy

1<sup>st</sup> Plaintiff - Present

No appearance for the respondents