



REPUBLIC OF KENYA



KENYA LAW
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**Gati & 2 others v Mwitwa & 7 others (Environment & Land Case
E005 of 2023) [2024] KEELC 6297 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6297 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE E005 OF 2023
GMA ONGONDO, J
SEPTEMBER 24, 2024**

BETWEEN

**FRANCIS NYAIHEMBE GATI 1ST PLAINTIFF
JOHN CHACHA MOGAYA 2ND PLAINTIFF
ANES ALOIS MARWA 3RD PLAINTIFF**

AND

**FRANCIS MIKWABE MWITA 1ST DEFENDANT
PRICIAN BOKOBORA MWITA 2ND DEFENDANT
MARK MWITA MAROA 3RD DEFENDANT
KLEOFAS MARWA MWITA 4TH DEFENDANT
MORWANI JOSEPH OKINDO 5TH DEFENDANT
PETER MATIKO RIMO 6TH DEFENDANT
ALFRED OGACHI KENYANYA 7TH DEFENDANT
LAND REGISTRAR KURIA 8TH DEFENDANT**

RULING

1. The instant ruling is in respect of an application by way of a Notice of motion dated 9th July 2024 by the three plaintiffs/applicants through M/S Edward Kisia and Associates Advocates for interim preservation order over the suit land Reference No. Bugumbe/Isebania/344 pending the outcome of this suit.



2. Mr Kisia learned counsel for the applicant informed the court that the respondents/defendants were duly served as revealed in the affidavit of service sworn on 22nd December 2023 and 22nd February 2024. He has implored the court to grant prayer No. 3 on the face of the application.
3. Clearly, there is no response to the application herein. The respondents were made aware of the existence of the application and the suit but opted not to respond to the same; see *Ogada-v-Mollin* 2009) KLR 620.
4. It is noteworthy that the applicants commenced this suit by way of a plaint (Fast Track) dated 3rd November 2023 seeking the orders infra;-
 - i. A declaration that Johana Mwita (deceased) held the suit land measuring approximately 10.40 HA in trust and for benefit of his four brothers who all deceased and dependants.
 - ii. A declaration that the Plaintiffs right over the suit land and resultant subdivisions are adverse to the rights of the 1st to 7th defendants all-inclusive over the same.
5. This court has the mandate to grant interim preservation orders as provided for under section 13 (7) (a) of the *Environment and Land Court Act* 2015 (2011).
6. In the circumstances, the applicants are deserving of an order of status quo over the suit land worthwhile.
7. Thus, the application is determined in terms of status quo to be maintained over the suit land pending the outcome of this suit. In particular, the parties shall not sell, lease, charge, transfer or subdivide the suit land during the pendency of the suit.
8. It is so ordered.

DATED AND DELIVERED AT MIGORI THIS 24th DAY OF SEPTEMBER 2024

G. M. A. ONGONDO

JUDGE

In Present of;-

Mr E. Kisia learned counsel for the applicants/ Plaintiffs

Tom- Court Assistant

