



**IN THE COURT OF APPEAL**

**AT KISII**

**(CORAM: MARAGA, MUSINGA & MURGOR, J.J.A.)**

**CIVIL APPEAL NO. 61 OF 2014**

**BETWEEN**

**MOHAMMUD MOHAMMED ALIO**

**ABDULLAHI ISMAEL MOROW.....APPELLANTS**

**AND**

**RICHARD OBIERO NYAKUNDI.....RESPONDENT**

**(Appeal from the Ruling and Order of the High Court of Kenya at Kisii**

**( Okong'o, J.) dated 6th day of June, 2014**

**H.C.C. SUIT NO. 377 OF 2013**

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**ORDER OF THE COURT**

When this appeal was called out for hearing, this Court, on its own motion, expressed to counsel its unwillingness to hear it considering the nature of the matter in dispute.

The trial Court ordered that pending hearing and determination of the substantive suit pending before it, neither party should enter, develop, lease or transfer the suit property, namely L.R. No. Kisii Municipality/Block 1/757.

Each of the parties claim to be the rightful owner of the property and the trial judge heeded that the issue of ownership of the suit property could only be conclusively determined upon hearing vica voce evidence. He therefore declined to grant the interlocutory orders that were being sought by the appellant.

We are in agreement with the views expressed by the trial judge.

When the court notified counsel of its views as hereinabove stated, Mr. Bosire, learned counsel for the appellant, applied to withdraw the appeal but requested that an order be made for the substantive suit to be heard on priority basis, to which Mr. Ochoki, learned counsel for the respondent, had no

objection.

In the circumstances, this appeal is marked as withdrawn under rule 96 (5) of this Court's Rules with no order as to costs.

We further recommend that H.C.C.C. No. 377 of 2013 be heard on priority basis.

**DATED at Kisii this 6<sup>th</sup> day of May, 2015**

**D.K.MARAGA**

.....

**JUDGE OF APPEAL**

**D.K. MUSINGA**

.....

**JUDGE OF APPEAL**

**A.K.MURGOR**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**



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