



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ENVIRONMENT AND LAND CASE NO. 55 OF 2017

MICHAEL KUNGU KIGIA1ST APPLICANT

ROSALIND WANJIRU2ND APPLICANT

VERSUS

HESBON KIMOTHO GACHOGU1ST RESPONDENT

JOSEPH NYAGA MUGO2ND RESPONDENT

PAUL MANGATI3RD RESPONDENT

MWIRARIA (Son of PAUL MANGATI).....4TH RESPONDENT

EVERINE MAKENA (Wife of MWIRARIA MANGATI)...5TH RESPONDENT

KENDI (Wife of KIMATHI MUGUNA).....6TH RESPONDENT

KARUGA MUGUNA.....7TH RESPONDENT

ESTHER KARURU MUGUNA.....8TH RESPONDENT

KIMATHI MUGUNA9TH RESPONDENT

KAIMENYI MUGUNA10TH RESPONDENT

RULING

1. This ruling is in respect of the application filed on 22/2/17 where applicant prays for orders;

(1) That this application be certified as utmost argent and given the earliest date for hearing Ex-parte in the first instance.

(2) That the Honourable Court do issue an order to commit respondents to prison for a period of six (6) months or for such period as this Honourable Court deems necessary for being in contempt of Court orders for disobeying and breaching orders dated 18/10/2004 in case 362/1986, court orders issued on 3/10/2006, Court issued on 14/3/2002 in High Court Civil No. 16/2002 by justice Isaac Lenaola Judge and Court orders issued on 20/01/2012 in High Court Case No. 40 of 2010.

(3) Costs of this application.

2. There is a Supporting Affidavit of the applicant filed on the same date where he has deponed as follows:

(1) That the 1st respondent was a party to CMC 362/1986 and Court dismissed his application purporting to be the owner of land parcel NTIMA IGOKI/ 3720, annexed marked MKK1.

(2) That on 30/7/2003 the respondent herein through an advocate in High Court Civil Appeal No. 16 of 2002 attempted to be enjoyed an issue that was dismissed by Judge on 3/10/2006, annexed marked MKK2.

(3) That the Court issued on 14th March, 2002 and is in contempt of this Court order annexed marked MKK3.

(4) That respondent on 8th November, 2016 obtained fraudulently Search Certificate in Land Office Meru Land Parcel NTIMA/IGOKI/ 3720 with Mungiki men and other goons with pangas, clubs from Kirinyaga County cut down mature coffee trees of Ksh. Four million (4 million) and were looking for me to kill me annexed marked MKK4.

(5) That the applicant urges this Honorable Court the respondents be committed to prison for (6) six months in prison in order to be an example of others.

(6) That the respondents are still in mind land parcel NTIMA/IGOKI/3720 as theirs.

(7) That this Honourable Court ought to make sure this respondent are imprisoned for disobeying court orders issued on by Honourable Magistrates and Judges be an example to those who act with impurity.

(8) That if this orders are not issued the applicant shall go until sufferings as has been called a dishonest persons and are thieves in the Nkouné Community.

(9) That Honourable Court do peruses Exhibit marked MKK5.

(10) That the 2nd to 10th respondent collaborated with the 1st respondent and are in contempt of court orders mentioned above as they participated in the destroying of the coffee plantation.

3. In the body of the application, the applicant has made reference to several suits namely.

1. CMC.No.362/86

2. High court civil appeal No.16/2002

3. High court case no.40/2010

4. Firstly, find that the orders sought for are not in tandem with the pleadings of the applicant. It is noted that the plaint was filed on 22/2/2017 whereby the prayers therein are for Orders of Inhibition as well as compensation for destruction of coffee trees.

5. Secondly, the plaint and the verifying affidavit do not contain the particulars of the suits the applicant is mentioning in his Notice of Motion. Under order 4 rule (1) (f),

“The plaint shall contain.....averment that there is no other suit pending and that THERE HAVE BEEN NO PREVIOUS PROCEEDINGS IN ANY COURT BETWEEN THE PLAINTIFF AND THE DEFENDANT OVER THE SAME SUBJECT MATTER...” That being the case, then on what basis is the applicant making the application. None whatsoever.

6. I therefore find that the application of 17/2/ 2017 is unmerited and the same is hereby dismissed.

DELIVERED, DATED AND SIGNED AT MERU THIS 31ST DAY OF MAY, 2017 IN THE PRESENCE OF:

C:A Janet

Ruling delivered this 31:05:17 in absence of all parties

HON. L. N. MBUGUA

JUDGE