



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
ELC CASE NO. 233 OF 2017

JOHNSON CHACHA

MWITA MARITA GARI.....PLAINTIFF

VERSUS

ADMINISTRATOR OF THE ESTATE OF WAISIKO BANCHWA

GEGOCHA.....1st DEFENDANT

PATRICE NYAMOHANGA BACHO.....2ND DEFENDANT

RULING

1. A Notice of Motion dated **12th July 2017** is brought under Certificate of Urgency pursuant to Order 40 Rule 1 and 2 of the Civil Procedure Rules and all enabling Provisions of the law, by the plaintiff/applicant against the defendant/respondent. He seeks the following orders;-

i. That this application be certified as urgent and service be dispensed in the first instance.

*ii. That pending the hearing and determination of this suit, the Defendant/Respondents be restrained by an order of injunction from transferring, transmitting, alienating, wasting and or dealing with a portion of land parcel number **BUKIRA/BUHIRIMONONO/319** measuring 1 acre in any manner whatsoever and howsoever pending the hearing and determination of this application.*

iii. Costs.

2. The application is supported by an affidavit sworn on 12/7/2017 by the plaintiff/applicant on the following grounds;-

a) **That** the applicants have acquired adverse possession of portion of the suit land herein measuring 1 acre.

b) **That** the 2nd defendant and his agents have commenced trespassing into the applicant's portion of the suit land and are currently destroying trees growing thereon.

c) **That** if not stopped by an order of injunction: the suit land is highly likely to lose its ecological worth.

d) **No** award would possibly offer compensation for damages occasioned on the environment and specifically the suit land.

3. The plaintiff/applicants counsel Mr. Kisia has informed the court during inter partes hearing today that ;-

a) THAT the Defendants/respondents duly served and not filed their response to the Notice of Motion.

b) The defendant/respondent are present in court today.

c) They have no objection to the grant of orders 2 of notice of motion.

4. I have perused the Notice of Motion heard the parties and considered Article **50(1) Constitution 2010, the case of Giella Vs. Cassman Brown & Co. Limited. (1973) EA 358 and Article 159 (2) (b) & (d) Constitution 2010.**

5. In the circumstances I find the Notice of Motion merited. I grant order 2 sought therein.

6. Costs be in the cause.

7. The defendant to file and serve defence within 60 days on the plaintiff.

8. Mention for pre-trial directions on 10/10/17.

DATED, SIGNED and DELIVERED at MIGORI this 25th day of July 2017

G. ONGONDO

JUDGE

In presence of :-

Mr. Kisia counsel for plaintiff/applicant

Tom – Court Assistant