



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ELC CIVIL SUIT NO 78 OF 2015

JACKSON KIOGORA GITONGA.....1ST PLAINTIFF
LAWRENCE M.MBABU.....2ND PLAINTIFF
MARY EUNICE TIRINDI TERESIO.....3RD PLAINTIFF
ROSE CAIKUTHII.....4TH PLAINTIFF
FRANKLINE MUTEMBEI.....5TH PLAINTIFF

VERSUS

JACOB MUTHAMIA JEDIELAND JACKSON REUGENDO.....DEFENDANTS

R U L I N G

This application is dated 22nd December,2015 and seeks prayers that:-

1. *This application be certified urgent, be heard during this Courts vacation and order be granted ex-parte in the first instance.*
2. *A very urgent order be issued for a period of 14 days only restraining the 2nd defendant, his servants and/or agents or anybody acting by or through him from entering into or remaining onto land parcels No. Igoji/ Mweru 1/1560, 1561 and 1562 or in any way interfering with or alienating the said land parcels pending the hearing of prayer No. 3 below.*
3. *This Honourable Court be pleased to restrain by an injunction the 2nd defendant his servants and/or agents or anybody acting by or through him from entering into or remaining into land parcels No. Igoji/Mweru 1/1560,1561 and 1562 or in any way interfering with or alienating the said land parcel till this suit is heard and determined.*
4. *Officer in charge of Kieni Kia Ndege Police Post do enforce the orders of the Court.*
5. *Costs of this application be provided for.*

The Application is supported by the Affidavit of Jackson Kiogora Gitonga, the 1st Plaintiff and has the following grounds:-

- 1. The Plaintiffs herein are in possession of Land parcels No. IGOJI/MWERU 1/1560, 1561 and 1562 registered in the names of the 2nd Defendant but previously registered in the names of the 1st defendant as Igoji/Mweru/1527.**
- 2. The Plaintiffs have extensively developed the said parcels of land and constructed thereon permanent and semi-permanent structures where they have established their homes and planted subsistence crops and indigenous trees. The Plaintiffs depend entirely on the land for their livelihood and that of their families.**
- 3. The Plaintiffs have filed this suit claiming title by way of adverse possession and accusing the defendants of perpetrating a fraud against them.**
- 4. On 16th December, 2015, the 2nd Defendant came into the land with a large group of unruly characters and purported to take possession of the land but their efforts were thwarted by the Plaintiffs. Then on 21 December, 2015, the 2nd defendant again engaged the same group of thugs and tried to take over by violence but again the Plaintiffs thwarted the effort.**
- 5. That the actions of the 2nd Defendant are unlawful and penal code offences under Section 90 of the Penal Code relating to forcible entry in land. Unless the Court intervenes to maintain the Status Quo the 2nd Defendant is likely to cause a breach of peace or change the fair playing level of the suit.**

In the presence of the Advocates representing all the parties, and by Written Consent, the application was given the 17th day of 2016 as the date it would be heard interpartes. On 17/02/2016 the Advocate for the Applicants was not in Court. The applicants were also not in Court. Mr. Muthamia prayed that the application be dismissed for want of prosecution. In my view, this was a reasonable prayer as the hearing date had been agreed upon through a Written Consent.

Mr. Jackson Rugendo, the 2nd Defendant informed the Court that when he purchased the suit land, the 4th Plaintiff Rose Ciakuthii was staying on the land. He also told the Court that Jackson Kiogora Gitonga moved into the land after he bought it. He said that he did not know the other Plaintiffs.

The 1st Defendant was not in Court.

In the Interest of Justice and in view of the fact that the 2nd defendant has told the Court that some of the Plaintiffs live on the suit land, I find it necessary to hear all parties. I issue the following orders:-

- 1. The Advocate for the Defendants to serve upon the Plaintiffs' Advocate the orders issued by the Court today within 10 days.**
- 2. The application is to be heard by way of Written Submissions with the Plaintiffs filing and exchanging their Submissions within 20 days of 17/02/2016 and the defendants to do so within 10 days after receipt of the Plaintiffs' Submissions.**
- 3. Directions on 21/03/2016.**

Written, delivered and Signed in Open Court at Meru this **17th day of February, 2016** in the presence of:-

CC: Daniel/Lilian

Muthamia for the Defendants

P. M. NJORGE

JUDGE