



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENTAL COURT AT MERU

E&L CASE NO 265 OF 2013

BERNARD NJERU KABUNGA.....1ST PLAINTIFF
ZAKAYO KITHUKA KATHIGA.....2ND PLAINTIFF

VERUS

JUSTUS KIRUGI INCHUNGA.....1ST DEFENDANT
JACOB NTHIGA RUARIA.....2ND DEFENDANT
JUDITH KAIRO.....3RD DEFENDANT

RULING

This application is dated 1st October, 2013 and seeks orders:-

- a. ***THAT, this Honourable Court be pleased to certify this application as urgent and dispense with its service in the 1st instance.***
- b. ***THAT, this Honourable Court be pleased to issue a temporary order of Injunction restraining the Defendants their agents, assignees and or people acting on their behest from entering, cultivating, planting the plaintiff's Land Parcel measuring approximately 80 Acres which Land has clear boundaries on the ground pending hearing of this application interparties.***
- c. ***THAT, this Honourable Court be pleased to issue a temporary order of Injunction restraining the Defendants their agents, assignees and or people acting on their behest from entering, cultivating planting the Plaintiff's land Parcel measuring approximately 80 acres which land has clear boundaries on the ground pending hearing and determination of this suit.***
- d. ***THAT, this Honourable Court be pleased to issue other further orders to meet the ends of justice.***

The application is supported by the Affidavit of Bernard Njeru Kabunga and has the following grounds:

- a. ***The Land measuring approximately 110 Acres belongs to the Plaintiffs/Applicants by Customary Law Tenure.***
- b. ***That the Defendants invaded the said Land and started cultivating without the Plaintiffs consent.***
- c. ***That the Defendants have harvested whatever produce was grown last season and another***

season of cultivation is approaching.

d. *That the Plaintiffs have no place to cultivate and feed their families.*

On 25th March, 2014, the parties, by Consent, asked the Court to allow prayer a. This position has remained valid for over 2 years.

On 7th October, 2014, the parties resolved, by Consent, to have the Application canvassed by way of Written Submissions with the Plaintiffs doing so within 21 days of that day. The Defendants were to do so within 21 days after receipt of the Plaintiffs' Submissions.

The Plaintiffs filed their Submissions but the Defendants did not do so. The Defendants, on 16/12/2014 sought 21 days to file their submissions. They were allowed to do so. But they did not file their Submissions.

I note that the Interlocutory Order of Injunction granted by Consent, on 7th October, 2014 has served the parties well, so far. As it is clear that the Defendants have refused and/or failed to file their Submissions as ordered by the Court at least two times, I find it meritorious to allow the Plaintiffs' application dated 1st October, 2013, **The application is hereby allowed. For avoidance of doubt, Prayer C is allowed. Costs shall be in the cause.**

It is so ordered.

Delivered in open Court at Meru this 15th day of February, 2016 in the presence of:-

CC: Daniel/Lilian

Thangicia h/b Ondari for the Plaintiffs.

P. M. NJOROGE

JUDGE