



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**PETITION 16 OF 2016**

IN THE MATTER OF PETITION UNDER ARTICLES 22 AND 23 OF THE CONSTITUTION OF KENYA

**AND**

IN THE MATTER OF INFRINGEMENT OF FUNDAMENTAL FREEDOMS AND RIGHTS OF THE PETITIONER UNDER ARTICLES 19,20,23,24,27,40, 47, AND 50 OF THE CONSTITUTION OF KENYA

**AND**

IN THE MATTER OF THE PROVISIONS OF SECTION 17,25, 26 AND 27 OF THE LAND CONSOLIDATED ACT (CAP 253) OF THE LAWS OF KENYA.

**AND**

IN THE MATTER OF THE ACTION OF THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER MERU CENTRAL IN ARBITRARILY ORDERING THAT NEW LAND REFERENCE NUMBERS BE ENTERED IN THE REGISTER TO NEW PERSONS AGAINST PETITIONERS LAND PARCELS BE DEMARCATED AND RECORDED FOR STRANGERS WHO ARE JUST TRESPASSERS TO THE PETITIONERS LAND

**BETWEEN**

JACOB MAKUYU & 122 OTHERS..... PETITIONERS

**VERSUS**

DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER

IMENTI CENTRAL DISTRICT.....1ST RESPONDENT

ATTORNEY GENERAL .....2ND RESPONDENT

**RULING**

1. This application is dated 27th June, 2016. It is brought to Court under Orders 40 and 51 of the civil Procedure Rules and Under Article 28 (1), (3), Articles 20, 21, (10) 2, 258 (1) , Rule 19 of the 6th schedule, and Article 40 of the Constitution of Kenya. The application seeks the following orders:-

***1. THAT this Honourable Court be pleased to certify this matter/application as urgent and be***

heard on priority basis.

**2. THAT this Honourable Court be pleased to issue an order of temporary injunction restraining the respondent from adjudicating , issuing new numbers or any other way dealing with the land parcels in MBWAA “A” ADJUDICATION section contrary to the procedures established under the laws of Kenya and in a manner that violates or threatens to violate fundamental rights and freedoms of the applicants pending the hearing and determination of this application.**

**3. THAT this Honourable Court be pleased to issue an order of temporary injunction restraining the respondent from adjudicating , issuing new numbers or any other way dealing with the land parcels in MBWAA “A” ADJUDICATION section contrary to the procedures established under the laws of Kenya and in a manner that violates or threatens to violate fundamental rights and freedoms of the applicants pending the hearing and determination of the main petition.**

**4. That cost of this application be provided for.**

2. The application is supported by the Affidavit of one JACOB MAKUNYU and has the following grounds:-

**1. That the applicants are the registered proprietors of land parcels in MBWAA “A” adjudication section.**

**2. That the applicants have since been evicted from their land parcel notwithstanding that they are the rightfully registered proprietors of those land parcels.**

**3. That the respondents are in the process of issuing new land registration numbers to the persons who evicted the applicants from their land parcels without due regard to the procedures well laid out in law.**

**4. That if not stopped the respondent will permanently deny the applicant what is rightfully theirs and guaranteed by the Constitution of Kenya, 2010.**

**5. The applicants have already lost all their developments in their land parcels as the invaders have destroyed them as they try to evict them permanently.**

**6. That further to loss of property the applicants lost their relatives who were killed during the invasion and now the applicants live as internally displaced persons in their country while other people are using their land parcels.**

**7. That this application if not granted the applicants will suffer irreparable loss and damage.**

**8. THAT it is only fair, just and equitable that this application is allowed.**

3. The Supporting Affidavit of JACOB MAKUNYU states s follows:-

1, JACOB MAKUNYU, of Rwarera Location, Ruiru Division , in Meru County within the Republic of Kenya do hereby take oath and swear as follows:-

**1. THAT I am the 1st Petitioner herein conversant with all matters touching on this application and/or petition thus competent to swear this affidavit.**

**2. THAT I am the chairperson of the applicant and I have their authority to swear this affidavit Annexed and marked “J. M.1” is the signed authority.**

**3. THAT the applicants are the registered owners of land parcels situated in MBWAA “A”**

*adjudication section. Annexed and marked “JM2” (1)-(XXX11) are copies of letters of confirmation of ownership and their receipts bearing their parcel numbers.*

*4. THAT the applicants were peacefully living on their respective land parcels until 1983 when they were evicted from their respective land parcels by the Tigania Sub tribe of the Meru People.*

*5. THAT the dispute land parcels were “NGWATO” and the Government of Kenya issued the same to the people of Meru. The whole area was Ruiiri-Rwarera and it was sub divided into 4 sections to wit;*

*a. RUIRI 1*

*b. RUIRII 11*

*c. RUIRII 111*

*6. THAT with their sole purpose to defeat justice and deny the applicants their proprietary rights the respondent hive off part of RUIRI-RWARERA ADJUDICATION SECTION and created the now so called MBWAA “A” Adjudication section which for practical purposes is part of RUIRI-RWARERA ADJUDICATION SECTION.*

*7. THAT the land registration numbers that the applicants have are for the RUIRI-RWARERA ADJUDICATION SECTION thus the respondent in hiving out MBWAA “A” from RUIRI-RWARERA ADJUDICATION SECTION they acted in secrecy and with intent to defeat justice.*

*8. That the problem has steamed out of a boundary dispute between the Tigania and the Imenti people as the Tigania have tried to push the boundary towards the area occupied by the Imenti thus in doing so they have been evicting the Imenti people out of their lands and permanently restraining them from occupying their lands parcels.*

*9. THAT if the respondents are not restrained from carrying out adjudication process in the MBWAA “A” ADJUDICATION SECTION the applicants are likely to be deprived what is rightfully theirs.*

*10. THAT it is only fair just and equitable that this application is allowed.*

*11. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.*

4. The application was to be heard on 18/07/2016. Mr. Kiongo for the Respondents told the Court that he needed 30 days to obtain instructions from his clients, He , however, asked the Court to grant prayer 2 in the application.

5. The following orders were issued:-

*a. Prayer 2 granted in terms of Section 63, CPA, by Consent, until the matter comes back to court on 7/11/2016.*

*b. Respondents granted 30 days to respond.*

*c. Directions on 7/11/2016.*

6. On 20/07/2016, the parties came to Court with Mr. Korir , the District Land Adjudication and Consolidation Officer (DLASO) to whom the Court orders issued on 18/7/2016 had been served . They explained that the MBWAA “A” Adjudication Section came under the jurisdiction of another DLASO, Mr. Martin Odhiambo, who is in charge of Tigania West. By consent, the parties asked the Court to

address the orders to the DLASO, Tigania West. I granted the prayer.

7. It is ordered as follows:-

**1. Prayer 2 is granted in terms of Section 63, CPA, by Consent, until the parties come back to Court on 07/11/2016 with the effect that the DLASO, Tigania West, Mr. Martin Odhiambo, who is in charge of MBWA "A" ADJUDICATION SECTION, his successors to his office and any persons working under him or his Successors is /are restrained from adjudicating, issuing new numbers or in any other way dealing with land parcels in MBWAA "A" ADJUDICATION SECTION until this matter comes back to Court on 7th November, 2016.**

**2. Respondents, as was requested on 18/07/2016, granted 30 days to respond and file apposite documents.**

**3. Directions on 07/11/2016.**

8. It is so ordered.

**DELIVERED IN OPEN COURT AT MERU THIS 20TH DAY OF JULY, 2016 IN THE PRESENCE OF:-**

*CC: Lilian*

*Kiongo for the Respondents*

*Miss Kungu for the Respondents*

*Kaimba for the Applicants.*

**P.M. NJOROGE**

**JUDGE**