



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

ENVIRONMENTAL AND LAND CASE NO 97 OF 2016

H M M.....1ST PLAINTIFF

K M (Suing on his behalf and on behalf

of his brother M M, A MINOR.....2nd PLAINTIFF

VERSUS

A G M.....1ST DEFENDANT

Y M M.....2ND DEFENDANT

S M M.....3RD DEFENDANT

RULING

1. This application is dated 14th day of July, 2016 and seeks orders:

- 1. That this application be certified as extremely urgent and service be dispensed with at first instance.*
- 2. That an order of temporary injunction be issued against the Defendants their agents ,servants, employees, or anybody claiming at their behest from building on, alienating or any way interfering with Land Parcel No. [...] pending hearing and determination of this application.*
- 3. That an order of temporary injunction be issued against the Defendants their agents, servants, employees or anybody claiming at their behest from building on, alienating or any way interfering with land Parcel No. [...] pending hearing and determination of this suit.*
- 4. Costs be provided for.*

2. The application is supported by the affidavit of KINYUA MBAYA and has the following:

- 1. The two Plaintiffs and their minor brother together with the 1st and 2nd Defendants are joint owners of the parcel aforesaid.*
- 2. That the law presupposes ownership in equal shares.*
- 3. That in spite of that position of law the two of the joint owners are building on a lion's share*

of the land being approximately 0.15 Acres from the Parcel which measures 0.25 Acres.

3. The Affidavit of K M reads as follows:-

“I, K M of ID NO. [...] of P.O Box [...] MERU do make oath and state as follows:-

1. That I am a male adult of sound mind well versed with the matters deponed to hereunder hence competent to make and swear this affidavit.

2. That I am a registered joint owner of land parcel number [...] alongside my four other brothers as joint owners (Annexed is title deed marked KM1).

3. That in spite of this clear joint ownership, two of the joint owners and one brother not in the joint ownership have started utilizing approximately 0.15 acres well more than half of the parcel subject of the suit by laying a foundation of a building thereon (Annexed and marked KM2A, KM2B and KM2C are copies of photographs of said building under construction).

4. That being joint owners the 5 of us are entitled to equal shares of the parcel subject of the suit.

5. That at this stage, it is only fair that orders of temporary injunction be granted to stop the Respondent from building on the parcel pending hearing and determination of the suit herein.

6. That all what is deponed to hereinabove is true to the best of my knowledge, information and belief.

4. The application was fixed to be heard ex parte on 20/09/2016.

5. During the day slated for the application to be heard inter partes, Mr. Muthomi told the Court that the Defendants' Advocate only took over the case from another advocate only a few days ago and needed time to respond to the application. Mr. Baithambu, the Plaintiffs' Advocate disputed this assertion and told the Court that Advocate Mugambi Kiogora had filed a NOTICE OF CHANGE OF ADVOCATE on 22nd July, 2016. This Court finds that this assertion is true. This is close to 2 months before the date the application was fixed for inter partes hearing.

6. Mr. Baithambu asked the Court to allow the application dated 14th July, 2016 as the Defendants' Advocate had not given any satisfactory reason as to why the hearing of the application should be postponed.

7. I have considered the oral submissions proffered on behalf of the parties. I deem it that the application has been heard. I determine that it be allowed.

8. I grant the following orders:-

i. The Application dated 14th July, 2016 is deemed heard and determined with the effect that Prayer 3 is granted pending hearing and determination of this suit.

ii. Costs shall be in the cause.

9. It is so ordered.

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

CA: Daniel/James

Baithambu for the Plaintiff

Muthomi h/b Kiogora Mugambi for the Defendants

P.M. NJORGE

JUDGE