



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ELC MISC APPL. NO.233 OF 2010

REPUBLIC APPLICANT

VERSUS

MACHAKOS LAND DISPUTES TRIBUNAL RESPONDENT

CHIEF MAGISTRATE'S COURT MACHAKOS..... RESPONDENT

NELSON KILONZI INTERESTED PARTY

JOSEPH MUASA KELI EX PARTE APPLICANT

R U L I N G

1. By a **Ruling dated 20.3.2014** the court in the instant suit quashed the decision of Machakos Land Disputes Tribunal in LDT Case No.1/08. The Application to impugn the same award was canvassed without any opposition by the Respondent and the interested party who never filed Replying affidavits after they were served with the application. The ruling aforesaid disposed the entire matter.
2. However, by an application dated 29.10.2014 the interested party now Applicant filed Notice of Motion on 30.10.2014 seeking injunctive reliefs against the original Applicant/now Respondent Joseph Keli to stop him from interfering with the suit land. The Applicant invokes the provisions of Order 40 Rule 1(a) and (b), 2, 3 (1), (2) Civil Procedure Rules and Section 3A Civil Procedure Act.
3. His main ground is that the Respondent is in the process of disposing suit land with a view of getting Applicant evicted from suit land. The Respondent is the Applicant's father.

Order 40 Rule 1 is to the effect that:

“Where in a suit it is proved by affidavit or otherwise that the property in dispute is being alienated by any party to a suit ... the court may grant temporary injunction to restrain such act Until disposal of the suit”

4. In the instant matter there is no suit pending and the matter has been disposed. The Respondent who was Applicant in the main matter has filed grounds of opposition and opposes the Application on grounds that in the circumstances of the matter herein the reliefs sought cannot issue. The court agrees with the Respondent's grounds of opposition and finds no merit in the application.
5. The court thus makes the following orders:-

1. The Application dated 29.10.2014 is dismissed.
2. Parties to bear their own costs since they are relatives.

Signed and Delivered at Machakos, this 23rd day of January, 2015.

CHARLES KARIUKI

JUDGE