



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

E.L.C. 271 OF 2015

FORMERLY KERUGOYA J.R. 16 OF 2014

JOYCE NYAKIO.....1ST PLAINTIFF/APPLICANT

KEITH KAMAU N'THAMBIRI..... 2ND PLAINTIFF/APPLICANT

VICTORIA HELEN WAMBIRO..... 3RD PLAINTIFF/APPLICANT

VERSUS

EPHRAIM NDWIGA N'THAMBIRI.....1ST DEFENDANT/RESPONDENT

JIM NJAMU NJIRU.....2ND DEFENDANT/RESPONDENT

RULING

1. The second defendant/applicant through his counsel filed a notice of motion dated 30th March, 2015 under certificate of urgency. The hearing of this application proceeded *ex-parte* after I was satisfied that the three plaintiffs/respondents were served with the hearing notice by the defendants.
2. He requests the court to vary the orders granted on 24th March 2015. In his affidavit, he has stated that the order should be varied to enable him have access to the suit land.
3. On that suit land, he has placed fencing poles, building material such as sand and ballast and three hundred stems of fencing plants. According to him, this is necessary to enable him plant maize and beans as this is the rainy season. Finally, he had bought manure for usage on the suit land.
4. He has pointed out that some of the materials are perishable in nature. He says that he is the registered owner of the suit land. He states that justice and fairness dictate that he be allowed to weed and continue farming activities until the end of the season. He has also stated that the order of 24th March, 2015 has unfairly exposed him to the risk of litigation from his suppliers and transporters who delivered the materials.
5. More importantly, he urges the court to grant the order to avoid the crops and the goods on the farm from being vandalized and being wasted.
6. In the light of the foregoing matters, the order of this court dated 24th March, 2015 is hereby varied. As a result, I make the varied order in the following terms:
 1. The second defendant will have access to the suit land for purposes of weeding and cultivating the suit land in respect of the maize and beans.
 2. He is also allowed to fence the suit land so as to avoid wastage and vandalism.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this 22ndday of

.....**APRIL**.....**2015.**

In the presence of Mr E. Njiru for the defendants and in the absence of the plaintiffs and their counsel

Court clerk Mr Muriithi

J.M. BWONWONGA

JUDGE