



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL CASE NO. 25 OF 2015**

**ATANASIO KITHURE FRANCIS.....PLAINTIFF/APPLICANT**

**VERSUS**

**CLARE REGINA KAGWIRIA.....1ST DEFENDANT/RESPONDENT**

**FRIDAH KAGENDO KABURU.....2ND DEFENDANT/RESPONDENT**

**R U L I N G**

This application is dated 15.4.2015. It seeks the following orders.

1. ***THAT on the grounds more specifically set out in the Certificate of Urgency filed herewith this Application be certified urgent and service therefor be dispensed within the first instance.***
2. ***THAT this Honourable Court be pleased to visit the locus in quo being the land comprised in NGUSICHI SETTLEMNT SCHEME NUMBER 585/586/587 pending the hearing and determination of this Application.***
3. ***THAT pending the interparties hearing and determination of this Application, an injunction do issue restraining the Defendants/Respondents jointly and severally either by themselves, their employees, agents or otherwise howsoever from harvesting, removing, alienating, selling or otherwise disposing the wheat planted on the property comprised in NGUSICHI SETTLEMENT SCHEME NUMBER 585/586/587.***
4. ***THAT pending the hearing and determination of the suit, an injunction do issue restraining the Defendants/Respondents jointly and severally either by themselves, their employees, agents or otherwise howsoever from harvesting, removing, alienating, selling or otherwise disposing the wheat planted on the property comprising in NGUSICHI SETTLEMENT SCHEME NUMBER 585/586/587.***
5. ***THAT pending the inter-partes hearing and determination of this Application, an injunction do issue directed at the Defendants/Respondents, detaining and preserving the wheat planted on the property comprised in Gusichi Settlement scheme number 585/586/587.***
6. ***THAT pending the hearing and determination of the suit, an injunction do issue directed at the Defendants/Respondents, detaining and preserving the wheat planted on the property***

*comprised in NGUSICHI SETTLEMENT SCHEME NUMBER 585/586/587.*

- 7. THAT the Honourable Court be pleased to direct the Court's Bailiff to ensure compliance with its Orders herein.**
- 8. THAT this Honourable Court be pleased to direct the Officer Commanding Station at Timau Police Station to ensure compliance with its Orders issued herein.**
- 9. THAT this Honourable Court be pleased to make any other order it deems fit and just in the circumstances.**

It has the following grounds:

**a) The Defendants/Respondents without any colour of right have dispossessed the Plaintiff of 30 acres of land being part of NGUSICHI SETTLEMENT SCHEME NUMBER 585/586/587 and proceeded to plant wheat threon despite the Plaintiff's undoubted right thereto.**

**b) The Plaintiff is therefore unable to utilize the said 30 acres of land yet the same is leased to him for a limited period expiring on 31st December, 2015.**

**c) The wheat subject of this Application and the suit grows to maturity within 24 weeks and there is every likelihood that the same may be harvested and disposed of by the Defendants/Respondents unless they are restrained by this Honourable Court, thereby rendering the adjudication of the suit filed herein nugatory.**

**d) The parties' proprietary and beneficial interest to the land comprised in NGUSICHI/SETTLEMENT SCHEME NUMBER 585/586/587 upon which the subject wheat is planted is a matter for determination in this suit and questions will arise as to which party is entitled to the benefits of the produce thereof and hence it is imperative that the said produce be preserved pending the hearing and determination of this application and the suit.**

**e) The Defendants' have by their actions exhibited a blatant disregard for the rule of law and it is manifestly clear that given their propensity to disregard the law, they shall unless checked by this Honourable Court continue to trample the rights of the plaintiff and defiantly render the process of this Court moot.**

**f) No party shall suffer any prejudice from the Orders sought herein and hence it is in the interest of justice that the orders sought be granted at the earliest.**

When the application came up for interpartes hearing on 19.5.2015, the parties submitted a consent that effectively dispensed with the application.

The consent was in the following terms:

- 1. The Interim Orders issued on 17th April, 2015 be and are hereby confirmed pending the hearing and determination of the main suit.**
- 2. The costs of the application be in the cause.**
- 3. The suit to be heard on its merits and parties be and are hereby ordered to comply with the provisions of order 11 of the Civil Procedure Rules within fourteen (14) days from today's date.**

It was signed by the advocates representing the plaintiff and the 1st and 2nd defendants.

To facilitate the hearing of the suit, although the parties have indicated that they are amenable to an out of court settlement, I issue the following orders/directions:

1. *Parties to fully comply with order 11, CPR within 14 days which compliance should include Case Summary and issues for determination.*
2. *Directions to be issued regarding developments in this mater including a possible out of Court settlement and/or a possible priority hearing date on 9.6.2015.*

**Delivered in Open Court at Meru this 19th day of May, 2015 in the presence of:**

**Cc. Lilian**

**Kimathi h/b Hobson Harris, Advocates for Plaintiff**

**Mutunga for defendant**

**P. M. NJOROGE**

**JUDGE**