



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

E & L NO 100 OF 2013

MWIKA NKURARUPLAINTIFF

VERSUS

KANANU M'KAURADEFENDANT

RULING

This application is dated 15/10/2013. It seeks orders.

1. ***The application BE certified urgent and the same BE heard exparte and on priority basis in the first instance.***
2. ***That the respondent be restrained by way of an order of temporary injunction from entering and or trespassing onto the suit land No. L.R. 6904-Athinga/Athanja adjudication Section dispossessing the applicant and or in any other way interfering with the applicant's possession occupation and use of the said suit land pending hearing and determination of the application interpartes.***
3. ***That the respondent be restrained by way of an order of temporary injunction from entering and or trespassing onto the suit land No. LR. 6904-Athinga/Athanja adjudication Section dispossessing the applicant and or in any other way interfering with the applicant's possession occupation and use of the said suit land pending hearing and determination of the main suit.***

OR IN THE ALTERNATIVE

4. ***The parties BE ordered to maintain status quo pending hearing and determination of the suit.***

The Application has the following grounds:-

- i. ***The applicant is the owner of LR. No. 6904-Athinga/Athanja adjudication Section.***
- ii. ***The applicant is currently in lawful possession occupation and use of parcel No. LR. 6904-Athinga/Athanja adjudication Section.***
- iii. ***The respondent has threatened to forcefully enter and cultivate on the applicant's land No. LR.6904-Athinga /Athanja adjudication Section.***
- iv. ***Unless the orders sought are not granted, (sic) the applicant will suffer irreparable loss.***
- v. ***There is a serious danger of bloodshed between the parties unless the orders sought are granted.***
- vi. ***It is in the interest of justice that the orders sought be granted.***

On 25/06/2014, the Court directed that the application be heard by way of written submissions with

the plaintiff filing and exchanging his submissions within 21 days so that the respondent could file his Submissions within 21 days after being served with the applicants' submissions.

On 28/09/2015 during mention for directions, Mr. Wamache for the Plaintiff/Respondent asked the Court to dismiss the application as the applicant had failed to file and exchange his submissions within the stipulated time. I find this statement to be correct.

Today's date was fixed by Consent but neither the Defendant nor his Advocate is in Court. I agree that the Defendant is inordinately delaying the hearing and determination of this case through his non-prosecution of this application. I, therefore, dismiss the application. I also issue the following directions:-

1. *The Plaintiff to fully comply with Order 11 CPR, within 45 days of today and the Defendant to do so within 45 days after being served by the Plaintiff with the apposite compliance documents.*
2. *Upon achievement of compliance, parties to obtain a mutually convenient date for directions from the Registry.*
3. *The Plaintiff to serve upon the Defendant the orders issued by this Court today within 7 days.*

Delivered in Open Court at Meru this 28th day of September 2015 in the presence of:

Cc: Lilian/Daniel

Wamache for the Plaintiff/Respondent

P.M NJOROGE

JUDGE