



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 137 OF 2004

FREDRICK KIOKO MUTUNGA1ST PLAINTIFF/RESPONDENT

ALBERT NTHAMA MUTUNGA2ND PLAINTIFF/RESPONDENT

VERSUS

MARTIN MUTUNGA KIOKORESPONDENT

RULING

1. On the **17th February 2005** the Court granted a temporary injunction order restraining the Defendant/ Applicant herein from selling, transferring or charging **Parcel Nos Matungulu/Sengani/863, 1407 and 2095** (*hereinafter the suit premises*) and from burning or pulling down the plaintiff's houses or evicting them from the plot pending hearing and determination of the suit.
2. In an application dated **4th December 2013** the Applicant seeks to have the injunctive order granted discharged and/or set aside. It is premised on grounds that the applicant was never notified of the proceedings; the Plaintiff/Respondents are using the court to intimidate the applicant; the respondents failed to disclose material facts to the court and it is in the interest of justice that the orders sought be granted.
3. In an affidavit in support of the application, the Applicant depones that he is the sole legal owner of the suit premises; he became aware of injunctive orders when he visited **Machakos Lands Office** in the year **2013**; the Plaintiff /Respondent obtained orders fraudulently following non-disclosure and concealment of material facts; and the orders are being used as a weapon of intimidation and threats.
4. The application was served on the Respondents advocate on the **11th December, 2013**. No response was filed. On the hearing date there was no appearance. The application was therefore uncontroverted. The applicant has also annexed to the supporting affidavit a title deed for **Matungulu/Sengani/863** which is in his name. He has demonstrated ownership of the said parcel of land.
5. Order **40 rules (6) and (7)** of the **Civil Procedure Rules** stipulate as follows:-

”(6) Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of 12 months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.

(7) Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”

6. The reason given by the applicant is sufficient to have the order granted discharged. The Plaintiff/Respondent on obtaining the order sought failed to take any step to have the case heard and determined. This court has no reason to deny the applicant the order sought.
7. It is therefore ordered that the injunction order issued against the Defendant/Applicant be and is hereby discharged.
8. No orders as to costs.

DATED, DELIVERED and SIGNED this 21ST day of JANUARY, 2014.

L.N. MUTENDE

JUDGE