



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**E & L 108 OF 2013**

GEOFFREY MIRITI.....1ST PLAINTIFF  
SALOME KINYA.....2ND PLAINTIFF  
BEATRICE KAROKI.....3RD PLAINTIFF  
PRISCILLA KALIUNTU.....4TH PLAINTIFF

VERSUS

TROJAN INTERNATIONAL LTD.....1ST DEFENDANTS  
JOSPHAT S. K. WANYEKI.....2ND DEFENDANT

**RULING**

This ruling relates to two applications. The first is filed by the plaintiff and the second one is filed by the defendants. The plaintiff's application seeks orders that:

1. **THAT** this honourable court be pleased to certify this application as urgent and service of the same be dispensed with at the first instance.

2. (a) **THAT** this honourable Court be pleased to issue a temporary order of injunction restraining the Defendants/Respondents, their agents, servants, employees or anyone acting on their behalf from fencing, cultivating, constructing, developing, building, evicting the Plaintiffs or disturbing them, or in any other way interfering with the Land Parcel No. Isiolo township Block 5/19 pending the hearing and determination of this Application and the main suit herein.

2.(b) In the alternative to prayer 2 (a) above, the Court to issue orders of status quo until hearing and determination of suit.

3. **THAT** an inhibition do issue preventing any dealings on the register in respect of Parcel No. Isiolo township Block 5/19 pending the hearing and determination of this Application and the suit herein.

4. **THAT** costs in the cause of this application be provided for.

Prayer 1 is spent.

The 2nd application, filed by the 1st defendant prays for orders that:

1. **THAT** this application be certified urgent and be heard exparte in the first instance.

2. **THAT** the plaintiffs jointly be ordered to deposit in court security for costs in the sum of Kshs.3 million forthwith.
3. **THAT** in the alternative in default of prayer 2 above, any interim orders made in this matter be stayed.
4. **THAT** costs for this application be provided.

Prayer 1 is spent.

The parties elected to have the two applications heard concurrently orally. The parties were heard on 21.6.2013.

During the hearing the plaintiff's claimed that the suitland belonged to them. The defendants also claimed that they owned the land whose history was that the 2nd defendant sold his interest to the 1st defendant. A copy of a certificate of title showing that a Certificate of Title had been issued to the 2nd defendant on 10.1.2013 was produced. A copy of an Agreement for sale by the 1st defendant to the 2nd defendant for a consideration of the sum of Kshs.4,750,000/= was also produced.

In their submissions with respect to both applications, the parties adopted diametrically opposed positions. Ownership of the suit land can only be established after the hearing and determination of the suit. The competing claims will be established after the hearing of the main suit.

As the Court of Appeal in Mbuthia Vs Jimba Credit Corporation and Another [1988] KLR 1 Stated:

**“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issue of fact, but rather to weigh up the relevant strength of each side's propositions. The Lower Court Judge had gone far beyond his proper duties and made final findings of fact on disputed affidavits.”**

I do not want to go beyond my proper duties as a judge. Allowing the two applications will in a way tread upon the issue of ownership of the suit land. In the premises, I decline to allow both applications.

I however, feel that this suit, due to its sensitivity, merits to be heard expeditiously. In the circumstances, I direct as follows:

1. The plaintiff's should comply with the provisions of the Civil Procedure rules within 21 days after this ruling is delivered.
2. The defendants should then comply with the provisions of the Civil Procedure Rules within 21 days after service upon them of the apposite compliance documents by the plaintiffs.
3. The plaintiffs will set the case down for hearing within 60 days after delivery of this ruling.

I note that the parties, had by consent, agreed upon the maintenance of status quo. I order as follows:

1. Maintenance of status quo be maintained.
2. Costs of both applications will be in the cause.

Dated and signed at Meru this 5th day of August 2013.

**P. M. NJOROGE**

**JUDGE**

Delivered in Open Court at Meru this 14th day of February, 2014 in the presence of:

Cc. Daniel

Kaume for Plaintiff's

**P. M. NJORGE**

**JUDGE**