



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**E & L CASE NO. 9 OF 2014**

RUKUNGI M'MUNGANIA.....PLAINTIFF

VERSUS

MUTEMBEI MALUNDU.....DEFENDANT

**R U L I N G**

This application is dated 27th January, 2014 and seeks orders:

1. **THAT** this application be certified urgent and be heard ex-parte in the first instance.
2. **THAT** pending interparties hearing of this application an order of temporary injunction be issued against the defendant, restraining him or his agents, servants, assigns successors in title, family members or anybody else acting at his behest or instance from trespassing, occupying, constructing or in any other way from interfering with the plaintiff's peaceful occupation and utilization of land reg. **No. S. THARAKA/TUNYAI "B"/721.**
3. **THAT** pending hearing and determination of this suit an order of temporary injunction be issued against the defendant, restraining him or his agents, servants, assigns successors in title, family members or anybody else acting at his behest or instance from trespassing, occupying, constructing or in any other way from interfering with the plaintiff's peaceful occupation and utilization of land reg. **NO. S. THARAKA/TUNYAI "B"/721.**
4. **THAT** cost of this application be provided for.

Prayer 1 is spent. Prayer 2 was granted on an interim basis on 28.1.2014.

The application was heard interpartes on 24th February, 2014.

Mr. Kaimenyi for the applicant submitted that the application was unopposed as the respondent had not filed any response. He referred the court to the filed Affidavit of Service which indicated that the Respondent had been properly served. He moved the court to confirm the Interim orders.

The Respondent who represented himself said that the applicant should get a surveyor to ascertain his land. He said that the land he had used was public land in which there was a market, a public hospital, a Chief's office, an assistant Chief's office and a shade from where public meetings were addressed. He was categorical that the applicant's land was elsewhere.

I note that should the respondent be correct, then the court may end up issuing orders not capable of being enforced. The court takes Judicial notice of this information, even though the respondent has not filed a replying affidavit in opposition of the application.

This application is allowed in terms of prayer 3. The applicant should ensure that the location of the suit

land is where he claims that it is. I further order, as I did on 28.1.2014 that the OCS in charge of the area where the suit land is situated does ensure compliance with prayer 3 in the application.

**Delivered in Open Court this 31st day of March, 2014 in the presence of:**

Cc. Daniel

Kaimenyi for Applicant/Plaintiff

Mutembei Malunde - Defendant.

**P. M. NJOROGE**

**JUDGE**