



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO. 233 OF 2006**

**MBUGUA THUO.....PLAINTIFF**

**-VERSUS-**

**JOSEPHAT MWANGI MUHORO.....1ST DEFENDANT**

**SAMUEL NJOGU MUNGAI.....2ND DEFENDANT**

**JOSEPH MWEMA NGANGA.....3RD DEFENDANT**

**CHRISTOPHER KARIUKI KAMAU.....4<sup>TH</sup> DEFENDANT**

**JOSEPH CHEGE NDUGUGA.....5<sup>TH</sup> DEFENDANT**

**WANJIKU GATHORONJO.....6<sup>TH</sup> DEFENANT**

**JACKSON MIRINGU KAMAU.....7<sup>TH</sup> DEFENDANT**

**DORIS NYAIRURI NJIRI.....8<sup>TH</sup> DEFENDANT**

**FRANCIS NGUGI MUNGAI.....9<sup>TH</sup> DEFENDANT**

**DELIVERANCE CHURCH (Sued thro' registered trustees).....10<sup>th</sup> DEFENDANT**

**TAYARI FARMERS CO.LTD.....11TH DEFENDANT**

**JOSEPH KIRAGU MURAYA.....12<sup>TH</sup> DEFENDANT**

**MARY MUTHONI KARIUKI.....13<sup>TH</sup> DEFENDANT**

**ESTHER WANGARE NDEGWA.....14<sup>TH</sup> DEFENDANT**

**CHARITY NJERI MWANGI.....15<sup>TH</sup> DEFENDANT**

**MICHAEL WAWERU MWANGI.....16<sup>TH</sup> DEFENDANT**

**RULING**

1. The Notice of Motion dated 29<sup>th</sup> October, 2012 has been brought under **Order 40 Rule 1**, and **2**, **Order 51 Rule 1** of the Civil Procedure Rules and **Sections 1A, 1B** of the Civil Procedure Act.
2. The Applicant is seeking, *inter alia*, the following orders among others -
  1. That pending the hearing and determination of this suit, this honourable court be pleased to restrain the Defendants herein specifically the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 11<sup>th</sup> Defendants by themselves, their agents servants and/or employees or any other individual claiming authority from them from entering, continuing with construction or in any other matter interfering with the plaintiff's peaceful use, possession, enjoyment and/or occupation of parcel No's **Mau Summit/Molo Block.7/1595,1596,1597,1598,1599,1600,1601,1602,1603,1403 and 1604.**(herein after referred to as the suit properties )
  2. That the orders sought be enforced with the assistance of the OCS Molo Police Station
  3. That costs of the application be provided for.
3. . The application is supported by the affidavit of **Mbugua Thuo**, and is based on the grounds stated on the face thereof.
4. The plaintiff had on 27<sup>th</sup> November, 2006 brought a Chamber Summons under **Order XXXIX Rules 1(a), 2,3 and 9 of the Civil Procedure Rules and section 63(e) of the Civil Procedure Act seeking for restraining orders by way of an order of injunction against the defendants from selling, alienating, transferring, charging or in any other manner howsoever interfering with the plaintiff peaceful use, occupation, possession and enjoyment of all those parcels of land subdivided from his plot Nos.625, and 626 and now registered as parcel Nos. Mau Summit/Molo Block 7/1595,1596 1597,158,1599,1600,1601,1602,1594,1593,1592,1591,1590,1589,1588,1604,1587,1603,1403,1380,1379, 1322,1585,1584,1583,1582,1581,1580,1579,1578,1577 (Tayari)respectively in the defendants names.**
5. The Chamber Summons was heard and a ruling delivered on 14<sup>th</sup> December, 2007 by **Koome J.** She found the application without merit and declined to grant the orders of injunction sought.
6. Even without setting out the details of the current application, it is evident that the only difference between this application and the chamber summons dated 27<sup>th</sup> November, 2006 is that now the plaintiff seeks to have the **1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 11<sup>th</sup> defendants restrained from entering, continuing with construction or in any manner interfering with the plaintiff's peaceful use, possession, and or occupation of the suit land** while in the earlier application he was seeking that the **defendants be restrained from selling, alienating, transferring charging or in any manner interfering with the plaintiff's peaceful use, possession, and or occupation of the suit land.**
7. Counsel for the plaintiff submits that the current application is "**necessitated by fresh acts of aggression**" and the two applications are different because "**the portions in issues presently are fewer than the ones in the previous application. It has not been denied that the mentioned respondents have commenced construction on the disputed lands an issue not in dispute previously. The developments commenced are new and they were not there before.**"
8. It is not lost to this court that **Koome J** in her ruling dated 14<sup>th</sup> December 2007, found that despite the applicant being in occupation of the suit premises since 1987, he had failed to establish a prima facie case

with a probability of success. The issues raised in the current Application have already been determined by a court of concurrent jurisdiction.

9. I therefore find that this application is resjudicata as found in **Section 7 of the Civil procedure Act 2010** which states:

**"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."**

10. In light of the foregoing the notice of motion dated 29<sup>th</sup> October, 2012 is dismissed with costs to the defendants.

**Dated and Signed at Nakuru this 16<sup>th</sup> day of May 2014.**

**L N WAITHAKA**

**JUDGE**

**PRESENT**

Mr Koima for the plaintiff

Mr Karanja for all defendant save for 17<sup>th</sup> Defendants

N/A FOR 17<sup>th</sup> Defendant

Emmanuel Maelo: Court Assistant

**L N WAITHAKA**

**JUDGE**