



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**(ENVIRONMENTAL AND LAND CASES DIVISION)**

**ELC 252 OF 2011**

**PHYLIS MUSOI LEPAPA ..... PLAINTIFF/APPLICANT**

**VERSUS**

- 1. ABDIRHAMAN MUSA SAID**
- 2. OLKEJUADO COUNTY COUNCIL .... DEFENDANTS/RESPONDENTS**

**R U L I N G**

1. The application dated 21/9/2011 seeks the following orders:-

1. **“(Spent).**

2. **(Spent).**

3. **An order of temporary injunction do issue restraining the Defendants/Respondents by themselves, their respective agents, servants, employees or otherwise by whomsoever in their name from demolishing, destroying or removing any of the Plaintiff’s structures being on the Plaintiff’s property known as UNSURVEYED RESIDENTIAL PLOT NO. 1279 – ONGATA RONGAI, from erecting or constructing any structures whatsoever or depositing and offloading of construction materials therein or from entering, remaining or otherwise howsoever from trespassing into the said premises or from disposing, letting, charging or mortgaging or dealing with the said property in any manner adverse to the Plaintiff’s interest whatsoever pending the hearing and determination of this suit.**

4. **The OCS Ongata Rongai Police Station to ensure compliance of the court’s orders.**

5. **The costs of this application be borne by the Defendants/Respondents.”**

2. The application is supported by the affidavit of the Applicant **Phylis Musoi Lepapa**. According to the said affidavit, it is the Applicant’s case that she is the proprietor of the parcel of land known as UNSURVEYED RESIDENTIAL PLOT NO. 1279- ONGATA RONGAI measuring approximately 0.045 Hectares. The Applicant has stated that the said plot was allocated to her in the year 1984. That the Applicant took possession of the plot and fenced the same and erected a semi permanent house therein. The Applicant later embarked in the process of obtaining title to the plot and even obtained a formal validation of the plot from the 2<sup>nd</sup> Respondent and was issued with a formal letter of allotment in the year 2010.

3. The Applicant's complaint is that on 13/9/2011, she was served with a "**demolition order**" by the 2<sup>nd</sup> Respondent who alleged that the 1<sup>st</sup> Respondent was the owner of the plot. That on 14/9/2011, the 1<sup>st</sup> Respondent with his agents and "**hired goons**" entered into the plot and demolished the fence and the structure erected therein and carted away the construction materials that the Applicant had deposited there. That the 1<sup>st</sup> Respondent who claimed to have purchased the plot **No. 1313/Residential Ongata Rongai Trading Centre** then started deporting his own construction materials at the plot. The Applicant stated that she has nothing to do with the said **plot No. 1313/Residential Ongata Rongai Trading Centre** and stated that the 1<sup>st</sup> Respondent does not hold any superior documents of title for the plot that the Applicant occupies. However, the Applicant stated that at one point her two nephews, **John Mbugua Munyinyi** and **Moses Gitahi Munyinyi** had once attempted to grab her plot and had contended that they had been allocated the same premises as plot No. **plot No. 1313/Residential Ongata Rongai** but never produced any allotment letter.

4. The 1<sup>st</sup> Respondent, **Abdihaman Musa Said** did not enter appearance.

5. The 2<sup>nd</sup> Respondent, **Olkejuado County Council** filed the grounds of opposition dated 3/1/2012 and opposed the application for the following reasons:

1. **"That the application is incompetent, misconceived and lacks merit.**
2. **That the application is clear abuse of the court's process and intended solely to prejudice the 2<sup>nd</sup> Respondent.**
3. **That the 2<sup>nd</sup> Respondent made allocations of the suit land to the relevant persons who balloted for the same contrary to the Applicant's alleged ownership of the same.**
4. **That the Applicants have failed on several occasions to attend the validation process conducted by the 2<sup>nd</sup> Respondent.**
5. **That the application is an afterthought, baseless and ought to be dismissed with costs to the 2<sup>nd</sup> Respondent."**

6. The application was to be canvassed by way of written submissions as per the court's directions. The Applicant filed her written submissions but the Respondents did not file any.

7. The affidavit evidence by the Applicant was not controverted by any other evidence. The Applicant filed documents in support of her claim. These documents include a letter of allotment dated 26/4/2010, certificate of official search dated 29/04/2009 and letter confirming allotment of the plot dated 9/10/2002. All these documents are in the Applicant's name. The Applicant has all along been in occupation of the plot. *Prima facie*, the Applicant has met the threshold for issuance of injunctive orders (see for example **Giella –vs- Cassman Brown & Co. Ltd (1973) EA 358**).

8. As stated by the Court of Appeal in **Samuel Mwangi –vs- Jeremiah Mitobu (2012) e KLR**, while quoting **Winfield** and **Jolowicz** in the book "**Tort**" 12<sup>th</sup> Edition at page 361 stated as follows:-

**"Possession in fact confers no actual right of property, but a possessor may nevertheless maintain trespass against anyone who interferes who cannot himself show that he has the right to recover possession immediately. A stranger cannot rely in his defence upon another person's right to possess (the "jus tertii") unless he can prove that he acted with that person's authority. Even wrongful possession, such as that acquired by a squatter, will, in principle, be protected except against the owner**

**of the land or someone acting lawfully on his behalf.”**

9. For the reasons stated above, I allow the application with costs in cause.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 29<sup>th</sup> day of September 2014.**

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**B. THURANIRA JADEN**

**JUDGE**