



REPUBLIC OF KENYA

High Court at Meru

Environmental & Land Case 60 of 2000

MIRITI M'ITHINYA.....APPELLANT

VERSUS

NJAGI MBOGORI.....RESPONDENT

KIRIMI M'BUURU.....APPLICANT

RULING

This application was brought to court under Order 40 rules 1 and 2 of the Civil Procedure Rules of Cap 21, Laws of Kenya.

According to the applicant, the appeal in this case had been slated for hearing on 1.11.2012 when it did not take off. On this day the respondent descended on the tea bushes the defendant had been plucking for the last 28 years. According to the applicant, the respondent's actions were inimical to the interests of the applicant as he was unable to pluck tea from Parcel No. ABOGETA/UPPER-KITHANGARI/709 while he continued to enjoy the applicant's tea on ABOGETA/UPPER-KITHANGARI/707. The applicant felt that it was only fair, just and equitable that the status quo obtaining by the 1st November, 2012 be maintained pending the hearing and determination of the appeal herein. The Applicant stressed that the tea in question was not being plucked by either the applicant or the respondent. It was simply going to waste.

According to the respondent the appeal related to Parcel No. ABOGETA/UPPER-KITHANGARI/707 and not ABOGETA/UPPER-KITHANGARI/709. Since the latter parcel of land belonged to the respondent, the applicant could not harvest tea on this land.

I have examined the positions taken by the two parties. I note that the respondent does not dispute that the applicant had been tending to and plucking tea on parcel NO.ABOGETA/UPPER-KITHANGARI/709. This undisputed fact provides a nexus between land parcels ABOGETA/UPPER-KITHANGARI/709 and ABOGETA/UPPER-KITHANGARI/707.

In the circumstances, I make the following orders:

1. Prayer number 4 in the application dated 15th November, 2012 is granted
2. Costs be in the Cause.

Written and signed at Meru this 28th day of March, 2013.

**P.M. NJOROGE
JUDGE**

Delivered in Open Court at Meru this 24th day of April 2013 in the presence of:

Carl Peters Mbaabu h/b for Gikunda for Appellant
Mr. Mwanzia for Applicant absent

**P. M. NJOROGE
JUDGE**