



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO. 64 OF 2011

JOSEPH MWORIA JOHN.....1ST PLAINTIFF/APPLICANT
ELIZABETH KAGURI NGERA.....2ND PLAINTIFF/APPLICANT
JACOB GITUM.....3RD PLAINTIFF/APPLICANT

VERSUS

LOWER IMENTI FORESTER.....DEFENDANT/RESPONDENT

R U L I N G

This application is dated 12th March, 2013 and the applicant has intimated that it is premised upon Order 40 rules 1, 2, 3 and 4 of the Civil Procedure Rules and section 3A and 63 c and e of the Civil Procedure Act. It seeks Orders:

- (a) **THAT this application be certified urgent and the same be heard ex- parte.**
- (b) **THAT this honourable Court be pleased to issue orders of temporary injunction to restrain the respondent by himself, his agents, assignees or anybody else acting on his behest from encroaching, interfering and evicting the applicant from Parcels No. KIRINDINE PART 2 LAND ADJUDICATION SECTION NO. 1997 and 685.**
- (c) **THAT the honourable Court be pleased to issue orders of inhibition to preserve KIRINDINE PART 2 LAND ADJUDICATION SECTION NO. 1997 and 685 pending the hearing and determination of this application and this suit.**
- (d) **THAT this honourable Court be pleased to issue an order of temporary injunction to restrain the respondent, his agents or any other person acting under his names from encroaching/interfering with KIRINDINE PART 2 Land Adjudication Section No. 1997 and 685 pending the hearing and determination of this case.**
- (e) **Costs be provided for.**

The application appeared in the cause list on 20.3.13 but the applicant or his counsel did not appear. It was in the cause list again on 29.4.2013 but no one appeared to argue it. Finally it was heard ex-parte on 6.5.2013 when prayer c was granted.

The applicant was directed to serve the respondent and I directed that the application to be heard interpartes on 15.5.2015.

When the application came up for hearing on 15.5.2013 neither the applicants nor their lawyer were in Court. No explanation whatsoever was proffered.

Miss Nyaga appearing for the defendant/respondent told the Court that the applicants did not serve their law firm with the application despite the applicants' knowledge that the firm she was representing was on record for the

defendant/respondent. Instead the applicants only served the defendant personally on 14.5.2013.

She expressed her belief that the application herein was improperly in Court and should be struck out as the advocates purportedly appearing for the plaintiffs were not on record. She, therefore, prayed that this application be dismissed with costs to the defendant/respondent.

I note that even after the applicants moved the Court to have their application heard interpartes on 15.5.2013, they were not in Court. Their action was tantamount to wanting the Court to waste its time. The said action could also amount to abuse of the Court process.

I do not want to base my decision herein on the allegation that the advocates for the plaintiffs were not properly on record. I do, however, note that at the stage of the application being heard interpartes, the applicants were not in Court.

In the circumstances, the plaintiffs' application dated 12.3.2013 is dismissed with costs granted to the defendant/respondent. If Inhibitions had already been registered

against land parcel Nos. KIRINDINE PART 2 LAND ADJUDICATION SECTION No.

1997 and 685, the same should be lifted forthwith.

Orders Accordingly.

WRITTEN AND SIGNED AT MERU THIS 15TH DAY OF MAY, 2013.

P. M. NJOROGE

JUDGE

DELIVERED IN OPEN COURT AND SIGNED AT MERU THIS 24TH DAY OF MAY, 2013.

In the presence of:

Cc. Daniel

Nyenyire h/b Joe Kathungu for defendants

Kimathi for Applicants - Absent

P. M. NJOROGE

JUDGE