



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CIVIL SUIT NO. 96 OF 2012**

STELLA NKIROTE KIRERA & 6  
OTHERS.....APPLICANTS/PLAINTIFFS

VS

JOHNSTONE KIRIMI MUTHUIRU & 3 OTHERS .....  
RESPONDENTS/DEFENDANTS

**RULING**

The application herein is dated 20th February, 2013 and is premised on provisions of the law mentioned on its face. It seeks orders;-

- 1. THAT this application be certified urgent and service of the same be dispensed with in the first instance.**
- 2. THAT this Honourable Court be pleased to issue a temporary injunction restraining the plaintiff/respondents, their agents or assignees from entering parcel No. 4486/KIANJAI ADJ SECTION until this application is heard inter-partes.**
- 3. THAT prayer NO. 2 above be confirmed until this suit is heard and determined.**
- 4. THAT this order be served upon the OCS GUNDUNE Police Station for Execution.**

**5. THAT this application be in cause which application is based on the annexed affidavit of JOHNSTONE KIRIMI MUTHUIRU the 1st defendant/applicant herein.**

Coupled with the following grounds.

- 1. THAT the applicant had purchased this land from 2nd defendant and he had a valid agreement to that effect.**
- 2. THAT now the plaintiffs/respondents want to start using the same by force as from this season hence need for this application.**
- 3. THAT the respondents live in a separate parcel.**

Prayers 1 and 2 are spent.

On the day fixed for inter-partes hearing, the advocate for the applicant did not avail himself to prosecute the application even though when the hearing date was obtained he was in court. He is the one who indeed urged the court to give him a hearing date.

Mr Anampiu, the advocate of the plaintiffs urged the court to dismiss the application as the non appearance of the defendant's advocate was intended to occasion delay which was detrimental to the interests of his clients as the defendants were enjoying undeserved interim orders. He asked the court to look at the Replying Affidavit of the 1st plaintiff, sworn on her behalf and also on behalf of all the plaintiffs.

Among other things, the Affidavit claimed that the 1st defendant had misled the court into granting orders which were harsh and which had been obtained on the basis of false facts. He also invited the Court to visit the Locus in Quo to establish the truth on

the ground as requested in the 1st plaintiff's Affidavit. Mr Kioga, the advocate for the 3rd and 4th defendants, did not support the application.

I do note that the suit herein was instituted vide a plaint dated 18/5/2012 and filed in court on 21/5/2012. This application was filed on 28/2/2013. Without attaching any undue significance to these dates, I note that the application was filed nine months after the date on which the suit was filed.

I have considered the circumstances surrounding this application including averments by the parties. I therefore order as follows;-

- 1. The application dated 20th February, 2012 is dismissed with costs to the plaintiffs.**
- 2. Any interim orders apposite to the application are vacated.**

Dated and delivered in Open Court at Meru this 13th Day of August, 2013 in the presence of;-

Court Clerk; Daniel/Mwanjaru.

Kieti for 3rd and 4th defendants - present. Other parties absent.

**P. M. NJOROGE JUDGE**