



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**ENVIRONMENT & LAND COURT**  
**CIVIL CASE NO. 55 OF 2013**

AMOS MURIITHI KARIAMATU.....PLAINTIFF

**VERSUS**

MARGARET WAMBUI WAMUGUNDA.....1ST DEFENDANT

JOHN WACHIRA WAMUGUNDA..... 2ND DEFENDANT

**RULING**

The plaintiff claims that he is the registered absolute proprietor of parcel of land known as **Ruguru/Kiamariga/59**. The 1st Defendant is a niece to the plaintiff while the 2nd Defendant is the 1st Defendant's son. He lives in a separate parcel of land.

According to the plaintiff, sometimes in the year 2008, the 1st Defendant separated from her husband and fled to the plaintiff's home in the suit premises where he was accommodated by the plaintiff's brother, Mathenge Kiriamatu, without the plaintiff's consent or knowledge a fact that the plaintiff established after his brother's death.

The plaintiff reported to the Chief and the defendants were summoned and requested to leave but they refused. The plaintiff is seeking a permanent injunction against the defendants restraining them either by themselves, their relatives, family members, servants, agents or anyone acting on their instructions from entering, utilizing or in any way trespassing on the suit premises. The plaintiff further requests that the defendants, their agents, their servants or relatives be evicted from the suit premises.

The 1st and 2nd defendants appeared in person and filed a defence whose gist is that they have been in occupation of the suit premises since 1975 and have developed the same and have brought up children on the said premises.

The 1st Defendant further states that she has never been married and that the plaintiff has always known that the defendants reside on the parcel of land and that it is only after the 1st Defendant's father's death (the plaintiff's brother) that they began having having problems. The plaintiff has tried to evict the defendants without success. They state finally that the suit premises is their grandfather's estate and therefore are not willing to move out since they are legally in occupation.

The suit is accompanied with a Notice of Motion dated 10/4/2013. the plaintiff is praying for:

- 1. That a temporary injunction do issue restraining the defendants either by themselves, their relatives, agents, servants or anybody acting under their instructions**

**from cultivating, planting or utilizing or committing any acts of wastage like cutting trees on parcel No.Ruguru/Kiamariga/59 pending the hearing and determination of the suit herein.**

- 1.
2. **That the above orders be enforced through OCS Kiamachibi Police Station.**
- 3.
4. **That costs of this application be provided for.**
- 5.

The grounds of the application are that the plaintiff is registered absolute proprietor of the suit land and that the defendants entered the suit premises without the plaintiff's consent and they are preventing the plaintiff from enjoying his land. Moreover that the plaintiff have another parcel of land adjacent to the suit property being parcel **No.Ruguru/Kiamariga/60**.

The application is supported by the affidavit of Amos Muriithi Kiriamatu herein referred to as the plaintiff, who states that he is registered owner of the suit premises herein. He relocated to Kieni with his family in the early 1970's leaving his brothers Gichuru and Mathenge in his wooden house at the suit premises. That his brothers were taking care of the suit premises where he had allowed them to cultivate and share the proceeds if they so wished. That the 1st defendant is his niece as she is the daughter of his late brother Wamugunda Kiriamatu. She was initially married to a man called Laban with whom they got the 2nd defendant. However she separated with Laban and moved out of his home leaving the 2nd defendant behind who is now married and resides at his father's home. She re-married a man called Ngatia with whom they lived until 2007 when they disagreed and she fled to her parents home. Her parents were dead by then and therefore she sought refuge at her uncle's place. The plaintiff's brother (Mathenge) now deceased accommodated her at the plaintiffs land in his house without the plaintiffs consent. He alleges that the 1st defendant and her son the 2nd defendant have adamantly refused to move out of his land despite his request at the Chief's office. That the defendant are on his land illegally hence he is unable to utilize and enjoy it. He claims that the defendants have tilled the suit premises in readiness to plant during the planting season which is highly prejudicial to his interests and that the defendants have already succeeded their late father's estate the same being Ruguru/Kiamariga/60 which is adjacent to the suit premises. He deposes that the 1st defendant's late father's share was distributed to his son Muriithi Wamugunda as confirmed by the Certificate of Confirmation of Grant in Succession Cause No.140 of 2007 and therefore it is only reasonable that the defendants move out of his land to their father's land.

In her replying affidavit the 1st Defendant deposes that the plaintiff is a brother to his late father Samuel Wamugunda Kariamatu who are the sons of the late Kariamatu Njaguara. The plaintiff is thus his uncle and a grandfather to the 2nd defendant. She further states that though the plaintiff is registered as the proprietor of land parcel No.Ruguru/Kiamariga/59, he was registered as such in trust for himself and his other siblings, who are now deceased but left behind their children, who include, herself, as beneficiaries of the suit premises. She states that neither her late father nor uncle, have ever taken care of the suit premises on behalf of the plaintiff. She was born on the parcel of land and has been in actual occupation and cultivating since 1975. She claims to have have developed the same by *planting tea leaves thereon, about 70 stems, which she delivers to Nyana Tea Buying Centre and planted all sorts and different species of trees fruits thereon. She has also participated in the village electric fencing project to have the electric fence in the suit premises to keep off the wild animals like elephants and a village water project. She has planted thereon various shamba products, to include but not limited to nappier grass, sweet potatoes, pumpkins, sugarcane.* Prior to 1975, the suit premises was occupied by her late mother, Eunice Wangui Wamugunda and late father Wamugunda, and children, who include the 2nd defendant. She denied the allegations by the plaintiff and states that the 2nd defendant resides in the suit premises with her, where they were left by her late father, who took care of the 2nd defendant and brought him up as his own son and even showed him where to built and she denies ever being married to Ngatia. The 1st Defendant father states that the suit land is not and has never been the plaintiff's land as he was registered in trust for other beneficiaries and that this is evidenced by the fact that the **suit** premises and another parcel of land Ruguru/Kiamariga/60, which is registered in the plaintiff's father's name were divided by the elders during the lifetime of the plaintiff's father and part of the suit premises was allocated to the 1st

defendant's father, now deceased.

The 1st defendant depones that the plaintiff did not involve the defendants in the succession of Ruguru/Kiamariga/60, mentioned in paragraph 17 of the affidavit and that it is clear that the 1st defendant was never allocated the above parcel in the succession cause as the same was allocated to her brother Muriithi Wamugunda, who lives in another parcel of land which their late father had bought. She was only aware of the succession cause in the earlier stages where she objected to the issue of the grant but after that she was never notified of any further proceedings in the succession cause and that the plaintiff has always known that she resides in the suit premises with her children and its only after her father, the plaintiff's brother and her late uncle, died that their dispute arose when he tried to forcefully evict her family without success. For instance, on 12th December 2012, the plaintiff, in the company of other persons, destroyed the house and kitchen and the 2nd defendant's house erected on the suit premises and also destroyed some crops thereon which he sprayed with pesticides. The plaintiff was as a result of the above charged with a criminal matter, Karatina Criminal Case No.1332 of 2012, Rep. -vs- Amos Muriithi Kariamatu and Another, which is pending before the Karatina Law Courts.

Having paraphrased the facts of this case, the court should now deal with the conditions for granting temporary injunctions. The conditions for granting an interlocutory injunction were stated by the Court of Appeal of East Africa in the celebrated case of **Giella -V- Cassman Brown & Co. Ltd. 1973 EA 338 where spry, VP said at page 360.E**

*“the condition for the grant of an interlocutory injunction are now, I think, well settled in E.A. **First**, an applicant must show a prima facie case with a probability of success. **Secondly**, an interlocutory injunction will not be granted unless the applicant might otherwise suffer irreparable injury, which would not be compensated by an award of damages **Thirdly**, if the court is in doubt, it will decide an application on the balance of convenience.”*

I have carefully considered the application, supporting affidavit and the replying affidavit and do find as a fact that the defendants are in occupation of the suit premises whilst the plaintiff is registered absolute proprietor of the land. I do find that the plaintiff has satisfied the principles in Giella -VS- Cassman Brown as he is the registered proprietor of the parcel of land and therefore has rights that cannot be defeated unless it is proved that he was holding the land in trust for the defendants. However since the defendants are in occupation, this application should determined on a balance of convenience which requires that the suit premises be preserved pending the hearing of the suit. This court makes an order in terms that the defendants to continue farming on the land but are restricted from cutting trees or committing any acts of wastage pending the hearing of the suit. The costs of the application shall be in the cause. Orders accordingly.

***Dated, signed and delivered at Nyeri this 26th day of September 2013.***

**A. OMBWAYO**

**JUDGE**