



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 107 OF 2010

1. MAINGI MBINZU & 214 OTHERS PLAINTIFFS/RESPONDENTS

VERSUS

1. COUNTY COUNCIL OF KITUI
2. SOUTH EASTERN UNIVERSITY COLLEGE .. DEFENDANTS/APPLICANTS

RULING

1. The application dated 19/11/2010 is brought under **Order VI Rule 13 (1) (a), (b), (c) and (d), Order 1 Rule 8 (1) and (2) Order XXXV Rule (1) (1), b, (2), (3) of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, Cap 21 Laws of Kenya** and all other enabling provisions of the law.
2. The application seeks the following orders:-
 - i. **That the plaint dated 27th May 2010 be struck out.**
 - ii. **That this Honourable Court do issue an order for the immediate removal of the Plaintiffs, their servants, agents or whomsoever, from the suit land.**
 - iii. **That the costs of this application, the suit and the counterclaim be provided for.**
3. The application is supported by the affidavit of **Prof. Geoffrey M. Muluvi** sworn on 19/11/2010.
4. The background facts are that on 3/6/2010, the Plaintiffs filed a suit against the Defendants in which they sought, *inter alia*, the following orders against the 2nd Defendant:-
 - v. **A declaration that the Plaintiffs are the proprietors of their individual and distinct parcels of land comprising in aggregate approximately 9,500 acres which are part of the land comprised in land title No. LR.13629 at Kwa Vonza Location in Kitui District.**
 - v. **A permanent injunction restraining the Defendants, their agents, employees and/or whosoever else acting on the Defendants' behalf from interfering with, or dealing in any way adverse to the Plaintiffs' use, occupation and possession of, and/or proprietary interests, rights and benefit in their respective parcels of land measuring in approximate aggregate area 9,500 acres.**
5. It is contended by the Applicants that the Plaintiffs' suit does not comply with **Order 1 Rule 8** in respect of representative suits. It is further contended that the verifying affidavit contravenes the provisions of **Order VII** of the **Civil Procedure Rules**.
6. On the merits of the case, it is averred that the Plaintiffs have no identifiable interest in the suit property. That the suit property was vested on the 2nd Defendant by virtue of the **Gazette Notice No. 102 of 2008** issued by the President.
7. According to the affidavit in support, the Plaintiffs are trespassers who have been cultivating the

suit land and have put up temporary structures on the land thereby hindering the university's expansion.

8. In opposition to the application, the Plaintiffs filed the grounds of opposition dated 7/5/2012. The application is opposed on the following grounds:-
- a. **That the application is bad in law, presumptuous and premature.**
 - b. **That the application is bad in law as it offends the provisions of Order 51 Rule 1 of the Civil Procedure Rules, 2010.**
 - c. **That the application is bad in law in that it violates the procedural provisions of Order 11 of the Civil Procedure Rules 2010.**
 - d. **That the application ought to be dismissed with costs to the Plaintiffs.**
9. I have considered the application, the reply to the same and the submissions filed by the respective counsels for the parties.
10. I have also read the ruling herein delivered on 21/10/2011 by **Hon. H.P.G. Waweru J.** In the said ruling, while dismissing an application for orders for a temporary injunction, the honourable Judge stated, *inter alia*:-

“As best, the Plaintiffs are trespassers in the face of resistance from the owner of the suit property. They have not brought any claim in adverse possession. Their claim, based upon a Presidential directive of dubious legal effect, is tenuous at best. I am not satisfied that they have demonstrated a prima facie case with a probability of success.”

This ruling remains unchallenged.

11. The plaint in paragraph No. 9 states as follows:-

“In or about July, 1998 and upon presentations by the local leaders, then the President of the Republic of Kenya directed the settlement of the Plaintiffs on 9.500 acres of the land leaving 500 acres for use by Ukamba Agricultural Institute.”

The alleged presidential directive is of no legal effect on the property already registered in the names of **Ukamba Agricultural Institute Ltd**, the predecessor of **South Eastern University College**. No proprietary interest exists on the part of the Plaintiffs in the suit property. None would be vested by the alleged Presidential directive. The Plaintiffs are therefore trespassers who have no *locus standi* to bring this suit.

12. Both parties have raised objections based on technicalities of procedure. However, **Article 159** of the **Constitution** stipulates that **“justice shall be administered without undue regard to procedural technicalities.”** Having arrived at the determination herein on merits, I will not delve into the issues of technicalities raised.
13. **Article 40** and **Article 60** of the **Constitution** sets out the general right for every Kenyan to acquire and own property. There is no allegation in the proceedings that the Plaintiffs have been denied their Constitutional rights.
14. With the foregoing, I allow the application with costs to the 2nd Defendant/Applicant.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 25th day of **September** 2013.

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B. THURANIRA JADEN

JUDGE