



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 12 OF 2009

TIMOTHY INGOSI & 87 OTHERS.....PLAINTIFFS

VERSUS

**KENYA FORESTRY RESERVE
HON. ATTORNEY GENERAL.....DEFENDANTS
COMMISSIONER FOR LANDS**

RULING

The application before this court is dated the 2nd June, 2011. The Application is brought under Order 40 Rule 7 of the Civil Procedure Rules and Section 3, 3A and 63 (B) of the Civil Procedure Act (Cap 21) and all other enabling provisions of the law.

The application was duly served on the Respondents' Counsel on the 14th July 2011 and the Respondents did not put in any replying affidavit nor was the Respondents' Counsel present at the hearing of the application, though duly served.

The Applicants' Counsel therefore proceeded exparte. The order sought to be varied was extracted and annexed to the said application. The application was supported by the affidavit made by Stanley Mwangi and dated the 2nd June, 2011, who is the Zonal Officer based in Turbo where the suit land is situated.

In brief the Respondents obtained injunctive orders against the Applicants and have proceeded to commit acts of wanton destruction of the forest land by cutting down indigenous trees. The injunctive orders in force are preventing the forest officer's from stopping the Respondent's from destroying the forest.

The Applicants annexed photographs to their application showing how the forest is being destroyed.

Counsel for the Applicant prayed for preservatory orders that the Respondents be directed not to cut down indigenous nature trees and to stop committing acts of waste and wanton destruction of the suit land pending the hearing and determination of the suit.

From the foregoing I find that the application herein has merit. The Applicant has made out a prima facie case and shown sufficient reasons to warrant preservatory orders. The forest must be preserved. The indigenous trees must also be preserved. The suit land is also gazetted as forest land and the Respondents do not have titles to the said land.

I hereby order that the status quo now obtaining to remain in force and the Respondents, their agents or servants are hereby restrained by way of temporary injunction from cutting trees (indigenous and otherwise) in the forest suit land and committing acts of waste and wanton destruction on the suit land pending hearing and determination of the suit.

Costs shall be in the cause.

Dated and Delivered at Eldoret this 20Th day of January 2012.

A. MSHILA
JUDGE