



MOGUSU NDUBI ..... 1<sup>ST</sup> PLAINTIFF  
KENEDY NDUBI..... 2<sup>ND</sup> PLAINTIFF  
AMBROSE NDUBI..... 3<sup>RD</sup> PLAINTIFF  
NYANGECHI NDUBI ..... 4<sup>TH</sup> PLAINTIFF

-VERSUS-

MESA MOGUSU ..... 1<sup>ST</sup> DEFENDANT  
HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT

### RULING

The plaintiffs and the 1<sup>st</sup> defendant have had a long standing dispute over land parcel Nos **North Mugirango/Boisanga 1/2209** and **2210**. According to the documents before court, the land originally their father's originally belonged to one **Mogusu Matongo** (deceased). **Mogusu Matongo** had two wives one **Kerubo Mogusu** (the defendant's mother) and one **Moraa Mogusu** (the plaintiff's mother). During the land adjudication process, around 1965 the suit land was registered in the name of **Moraa Mogusu** the plaintiffs' mother, the defendant's mother having died in the mid 1940's.

In 2006, the defendant lodged his claim with the Ekerenyo Land Disputes Tribunal (claim No. 12 of 2006) against the plaintiffs. The Tribunal found in his favour and ordered that one of the land parcels namely **Boisanya/495** in the names of **Moraa Mogusu** be given to **Kerubo Mogusu** (deceased) to be transmitted to **Mesa Mogusu**, the 1<sup>st</sup> defendant while parcel **No. Boisanga 496** remain in **Moraa Mogusu's** name to be transmitted to the plaintiffs. The Tribunal's award was subsequently adopted by the Nyamira Resident Magistrate's court on 16<sup>th</sup> August 2007.

On 3<sup>rd</sup> September 2007, the plaintiffs obtained letters of administration Ad Litem in respect of the estate of **Moraa Mogusu** who had passed on, on 13<sup>th</sup> March 1994. They have now sued the defendants.

In the suit filed on 28<sup>th</sup> April, 2011 they seek a declaratory order that the decision of Ekerenyo Land Disputes Tribunal dated 13<sup>th</sup> June, 2007 which was adopted by the Nyamira Resident Magistrate's court vide Misc. Application No. 25 of 2007 revoking title of land parcel Nos. **North Mugirango/Boisanya 1/2209** and **2210** and awarding the same to the defendant was unlawful, null and void. They also seek a permanent injunction against the 1<sup>st</sup> defendant from interfering in any way with the suit land.

Contemporaneously, the plaintiffs filed the instant application seeking orders that:-

i. *That pending hearing and determination of this suit, a temporary injunction be issued against the*

*defendant, restraining him, members of his family, servants and/or agents from entering or remaining in LR Nos. North Mugirango/Boisanga/2099/2210 or in any way interfering with quiet possession and use of the suit land by the applicants/plaintiffs.*

*ii. That pending hearing and determination of this suit, the defendant, members of his family, servants and/or agents be restrained from entering into the aforesaid parcels of land and cutting down farm products such as trees and carrying them away for his use.*

*iii. Costs of this application be provided for.*

The application is premised on the grounds that the Tribunal had no jurisdiction to hear and determine the dispute over the suit land as the same was registered land, that the respondent had no *locus standi* to commence proceedings at both the Tribunal and the RM's court; and, that the court adopted an illegal decision of the Tribunal.

In the supporting affidavit, the 3<sup>rd</sup> plaintiff faults the respondent for undertaking proceedings both at the Tribunal and the lower court without having obtained letters of administration. He avers that the respondent has subsequently forcefully taken possession of the suit land and may execute the decree. In a further affidavit in support, the 3<sup>rd</sup> plaintiff avers that the 1<sup>st</sup> respondent has neither entered appearance nor filed defence and that the suit ought to be heard by way of formal proof. He has urged the court to grant a temporary injunction pending such formal proof.

I have considered the application and the record. The 1<sup>st</sup> defendant has neither entered appearance filed defence nor opposed the application. The Attorney General has also neither entered appearance, defence nor reply to the present application. I note that he is erroneously named in the application not as a defendant but '2<sup>nd</sup> plaintiff'.

It is apparent from the record that both the plaintiffs and the 1<sup>st</sup> defendant have a claim over the suit land, the same having been originally family land and subject to inheritance by both parties. However, the 1<sup>st</sup> respondent has ignored court process in respect of both the suit and the application. He has not deemed it fit to either oppose the application nor file a defence and counter-claim if any to prosecute his interest.

In the circumstances, the application stands unopposed. The averments in the supporting affidavit are not controverted and must be taken as true. Consequently, the application dated 26<sup>th</sup> April, 2011 is allowed. I make no order as on costs.

Orders accordingly.

**Ruling dated, signed and delivered at Kisii this 20<sup>th</sup> day of September, 2012.**

**R. LAGAT-KORIR**  
**JUDGE**

**In the presence of:**

..... for applicant

..... for respondent

..... court clerk

**R. LAGAT-KORIR**  
**JUDGE**