



**REPUBLIC OF KENYA**

**High Court at Meru**

**Environmental & Land Case 101 of 2012**

**CECILIA KAMBURA MUKINDIA.....1<sup>ST</sup> PLAINTIFF**

**SALESIO IRITE M'MUKINDIA.....2<sup>ND</sup> PLAINTIFF**

**AGAINST**

**M'IMAINGI ETHARAMBURI.....DEFENDANT**

**R U L I N G**

The Application is a notice of motion dated 21<sup>st</sup> September 2012. It does not invoke the provisions of the law under which it has been brought. There are 3 substantive prayers sought.

**1..**

**2. That this honorable court be pleased to issue orders for temporary injunction and permanent injunction against the defendant in reference to Ruiiri/Rwarera/5089 and 5088 thus the defendant be restrain from illegal developing and erecting of structures, felling down of trees, excavating and selling of stones in the parcel aforementioned.**

**3. That this honourable court be pleased to issue orders eviction of the defendant from Ruiiri/Rwarera/5089 and 5088.**

**4. Costs be awarded to the plaintiff.**

The application is premised on grounds which are on the face of the application.

The application is supported by an affidavit sworn by Salesio Irite Mukindia of even date. I have considered this application despite being served the defendant did not file any response to the application. When the applicant came to argue the application 3 weeks after he brought it he urged the court to grant a temporary injunction to restrain the defendant from constructing or utilizing his property. The applicant urged that the defendant was busy constructing a timber house on the land. He said that he had cut down trees which he was in the process of selling and that he had dug a pit latrine and had poured ballasts.

The application is defective for two reasons. One the Applicants failed to invoke the provisions of the law under which it is brought. Two a will which is the basis of the plaintiffs claim over the suit property should have been annexed to the supporting affidavit. It has not been annexed and there is no explanation why that was not done. I have also perused the pleadings and find that the plaintiffs who are the applicants are seeking a permanent injunction against the defendant and an order of eviction. It is

obvious that the plaint and all the pleadings were prepared by lay men. The plaint for instance is lacking of particulars that would have demonstrated what the plaintiff's claim over the suit property is. That is a defect which can easily be amended before the suit is heard by the court. Supporting the plaint is a letter from the District Land Adjudication and Settlement Officer Meru Central District which indicates that the property which is the subject matter of this suit is recorded in an adjudication area and further that it is against the plaintiffs. There is also annexed to the plaint consent from the District Land Adjudication Officer granting the plaintiffs in this suit his consent to the filing of the plaintiff's claim over the two parcels of land which are the subject matter of the suit.

**“Article 159 of the Constitution provides as follows:-**

**(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—**

**(a) Justice shall be done to all, irrespective of status;**

**(b) Justice shall not be delayed;**

**(c) Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause**

**(3);**

**(d) justice shall be administered without undue regard to procedural technicalities; and”**

The above provision of the constitution requires the court to do justice to the parties and to administer it without undue regard to procedural technicalities. The plaintiffs did not invoke the provisions of the law under which the injunction order sought can be granted. That is not just a procedural defect but a legal one. Further failure to annex the written will under which the plaintiffs base their claim is a legal defect to the proceedings.

Since consent to file suit was provided as required under S.30 of the Land Adjudication Act. **I will strike out the application only and make no orders as to costs. I also set aside the interim order.**

**DATED SIGNED AND DELIVERED AT MERU THIS 8<sup>TH</sup> NOVEMBER 2012.**

**J. LESIIT**

**JUDGE.**