



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC NO. 404 OF 2010

JOSEPH WAHINYA MWAURA1ST APPLICANT
 LUCAS MAMBO MWAURA2ND APPLICANT
 JOHN MBURU MWAURA3RD APPLICANT
 TERESIA WAMBUI MWAURA4TH APPLICANT
 LUCIA WANJIKU MWAURA 5TH APPLICANT

VERSUS

NJUGUNA GITHUKA1ST RESPONDENT
 FRANCIS NDERE GITHUKA2ND
RESPONDENT
 ANTONY M. WAMBURU (Administrator/representative of the estate of WAMBURU GITHUKA
 (deceased).....3rd RESPONDENT

RULING

The applicants brought this suit by way of Originating Summons following a dispute with the defendants in respect of parcels of land known as Chania/Makwa/677 and Chania/Makwa/T59. There are several orders sought in the Originating Summons some of which cannot be canvassed by way of Originating Summons but, the bottom line is that the applicants seek an order that they be declared to have become entitled to the two parcels of land by way of adverse possession.

Following the filing of the Originating Summons, an application was filed by way of Chamber Summons for injunction orders to restrain the respondents from dealing with the said parcels of land to the detriment of the applicants. The orders sought by the applicants in the Chamber Summons dated 31st August, 2009 are all directed against the Land Registrar or District Land Surveyor, Thika District. The applicants are represented by an advocate who, with profound respect, should have known that both the Land Registrar and Land Surveyor, Thika District are Government officials and subject to Government Proceedings Act Cap 40 Laws of Kenya. Section 16 (2) reads as follows,

“The court shall not in any Civil Proceedings grant an injunction or make any order against an officer of the government if the effect of granting the injunction or making the order would be to give any relief against the government which could have been obtained in proceedings against the government”.

In the case of **Gabriel Mghendi and 2 others versus Registrar of Societies (2006) e KLR** the court observed as follows,

“Suits against government official unless they are brought by Judicial Review applications under Order 53 of the Civil Procedure Rules or where the officials are sued in their personal capacities

should be brought against the Attorney General. Section 16 of the Government Proceedings Act makes that quiet clear.”

It is also common knowledge that injunctions or orders analogous to injunctions cannot issue against the government or government officers. I have related the above observations to the Originating Summons and orders sought therein and find that, the plaintiffs herein are not likely to succeed in their suit based on the pleadings as drawn. It is not necessary for me to go into the merits of the said summons and therefore dismiss the application dated 31st August, 2010 with costs to the respondents.

Orders Accordingly.

Dated, signed and delivered at Nairobi this 28th day of July, 2011.

A. MBOGHOLI MSAGHA
JUDGE