



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO. 20 OF 2004

IN THE MATTER OF THE ESTATE OF SAMUEL MERU GICHUHI(DECEASED)

HARRISON MAINA MERU.....APPLICANT

VERSUS

BEATRICE NYAMBURA MERU.....RESPONDENT

RULING

The subject matter of this ruling is the Summons General dated 18th May 2011 in which Harrison Maina Meru, the applicant herein, sought for the following orders:

1. ***That the application be certified urgent.***
2. ***That the interim injunctive orders given by this Honourable court on the 11th day of February 2011 be varied to the extent that the Respondent by herself or agents be stopped from interfering with the Applicant quiet enjoyment of the suit properties contained in the order or interfering with the applicant picking and delivering his tea produce in L.R. CHANIA/MAATARA/1398 to Maatara tea factory Co. Ltd. until the determination of the summons for revocation of grant.***
3. ***That costs be provided for.***

It is the submission of the Applicant that this court in its ruling delivered on 11th February 2011 did not order him to cease working on the land, deliver the produce nor did it deny him the source of livelihood. The Applicant complained that the Respondents have misused the court order by interfering with his enjoyment of picking tea from **L.R. NO. CHANIA/MATAARA/1398**. He claimed that he was informed by the tea factory that his account had been frozen due to the court order. It is further alleged that on 11th May 2011 the Applicant's sister Ann Wambui Meru raided his tea farm and forcefully picked his tea. On the basis of the above reason the Applicant urged this court to vary the orders issued on 11th February 2011.

I have carefully considered the grounds set out on the face of the Summons General dated 18th May 2011 and the facts deponed in the supporting affidavit. The Applicant is basically seeking to have the order issued on 11th February 2011 varied so that the Applicant may continue picking tea from L.R. NO. **CHANIA/MATAARA/1398**. It is not in dispute that the Applicant herein was restrained from disposing of, alienating, transferring, dealing and or in any way interfering with *inter alia* **L.R. NO.**

CHANIA/MATAARA/1398. In ***Blacks Law Dictionary, 8th Edition***, “Land” is defined as an immovable and indestructible three dimensional area consisting of a portion of the earth’s surface, the space above and below the surface and everything growing on or permanently affixed to it. From the above definition, it is obvious that the tea crops on the land in dispute form part of the land hence it is not conceivable to separate the two. In my view, the order issued on 11th February 2011 restrained the Applicant from picking the tea standing thereon. In the circumstances of this case and on the basis of the material placed before me, I see no merit in the Summons General dated 18th May 2011. The same is ordered dismissed with costs to the Respondents.

Dated and delivered at Nyeri this 14th day of October 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. A. Kariuki holding brief Kiminda for Applicant and Gitibi holding brief Muthoni for Respondent.