



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**MULTI-TRACK CIVIL SUIT NO.35 OF 2011**

**ISAAC MWANGI KIMUNDU.....APPLICANT/PLAINTIFF**

**VERSUS**

**MUCHERU NJOROGE.....1<sup>ST</sup> RESPONDENT/DEFENDANT**

**SUSAN WAIRIMU NJAGI.....2<sup>ND</sup> RESPONDENT/DEFENDANT**

**JOHN MUTUNE KIHARA.....3<sup>RD</sup> RESPONDENT/DEFENDANT**

**RULING**

The applicant has brought the motion dated 7<sup>th</sup> March, 2011 claiming that the respondents have entered upon his land known as NYANDARUA/MURUAI/982 without any colour of right and have commenced construction thereon. The applicant therefore seeks that the respondents be restrained by an order of injunction from:

**“..... constructing, entering, remaining, occupying and/or in any other manner trespassing upon and/or interfering with the plaintiff’s peaceful occupation and possession of parcel of land NYANDARUA/MURUAI/98.....”**

The respondents were duly served with this application as well as a hearing notice. However, on the date the matter was set down to be heard, none of them attended. Neither have they replied to the application.

The applicant has exhibited a title deed for the suit property which is in his name. He has averred without being rebutted that the respondents have invaded his property; that they have no right to do so; that they have constructed structures on the property and are in the process of developing a cattle dip. He has annexed photographs of these developments.

Without evidence in rebuttal, *prima facie* the applicant has shown that he deserved the order of injunction pending the hearing of the suit. However, the order cannot be granted in the manner framed as doing so would amount to evicting the respondents at this stage before the trial. The prayers sought are granted subject to the following modification:

That the respondents, their servants, agents and/or employees are restrained from constructing or interfering with the suit property, (NYANDARUA/MURUAI/982), in any manner pending the hearing of the suit.

Costs to the applicant.

**Date, Signed and Delivered at Nakuru this 28<sup>th</sup> day of November, 2011.**

**W. OUKO**

**JUDGE**