



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**

**CIVIL CASE NO. 78 OF 2011**

**WILSON MUGUKU GITHINJI.....1<sup>ST</sup> PLAINTIFF**

**FRANCIS WAHOME GITHINJI.....2<sup>ND</sup> PLAINTIFF**

**MARGARET WANJIRU GITHINJI.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**JAMES WAHOME GAKURU.....DEFENDANT**

**RULING**

**Wilson Muguku Githinji, Francis Wahome Githinji and Margaret Wanjiru Githinji, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs herein, took out the motion dated 21<sup>st</sup> June 2011, whereof they applied for the following orders:**

- 1. *That service of this application be dispensed with in 1<sup>st</sup> instance due to its urgency and the same be ordered heard at very first priority.***
- 0. *That an interim order of injunction do issue restraining the defendant/respondent either by himself, relatives, servants, employees, agents, assignees or anybody claiming under or in his name from in any way whatsoever interfering with the plaintiffs/applicants quiet occupation use and possession of land parcel number KIRIMUKUYU/THIU/477 pending the hearing and determination of this application.***
- 1. *That an order of temporary injunction do issue restraining the defendant/respondent either by himself, relatives, servants, employees, agents, assignees or anybody claiming under or in his name from in any way whatsoever interfering with the plaintiffs/applicants quiet occupation use and possession of land parcel number KIRIMUKUYU/THIU/477 pending the hearing and determination of this suit.***
- 0. *That this honourable court do issue a prohibitory order against registration of any transaction relating to land parcel KIRIMUKUYU/THIU/477.***
- 0. *That costs be paid by the defendant/respondent.***

The Motion is supported by the joint affidavit and a supplementary affidavit sworn by the Plaintiff. James Wahome Gakuru, the Defendant herein swore a replying affidavit to oppose the Motion.

I have considered the material placed before this Court and the rival oral submissions made by learned counsels. The substantive suit in this dispute is the originating summons dated 1<sup>st</sup> June 2011 in which the Plaintiffs are seeking to be declared to have acquired the parcel of land known as **L.R. NO. KIRIMUKUYU/THIU/477** by adverse possession. They are now before this Court seeking for

injunctive orders to preserve their occupation and possession pending the hearing and determination of the originating summons. The Applicants aver that the aforesaid land was registered in their late father's name i.e. Githinji Guare on 25<sup>th</sup> March 1971 and that the Defendant unlawfully got registered as the proprietor of the suit land in 1984. The Plaintiffs aver that they have been in continuous and peaceful occupation of the suit land for a period of over 40 years. It is alleged that on 12<sup>th</sup> April 2011 the Defendant entered the land and purported to cut down trees, erected fences and made threats to evict them and that is why they need the injunctive orders. The Plaintiffs disclosed that they had obtained injunctive orders to restrain the Defendant vide **Nyeri H.C.C.C. No. 41 of 2011** but the Defendant has continued to defy the orders. The Defendant on his part urged this court to dismiss the Motion. He admitted that a prohibitory order was registered against the suit land vide **Nyeri H.C.C.C. No. 93 of 1985**. The aforesaid suit was dismissed for want of prosecution on 9<sup>th</sup> October 2010. He alleged that the Applicants herein being the beneficiaries of the Estate of Githinji Guare, deceased, should have taken up Letters of Administration to enable them file this suit on behalf of the Estate. The Defendant conceded that the late Githinji Guare was buried on the suit land. He claimed he acquired the land in 1984 having purchased the same through a public auction to settle the debt due from Githinji Guare, deceased. It is alleged that the late Githinji Guare filed **Nyeri H.C.C.C. NO. 93 of 1985** whereof he obtained injunctive orders against the Defendant upto 2001 when the suit was dismissed for want of prosecution. It is argued that the Applicants do not reside on the suit land.

After anxiously considering the rival submissions, I am convinced that the Plaintiffs have been in occupation of the suit land for a long time. The question which the trial Court will grapple with is whether their occupation was adverse to that of the Defendant herein. That is a serious triable issue which can only be determined by the reception of evidence. The matter is complicated by the fact that the late Githinji Guare's body was buried on the suit land. The other question which has disturbed my mind is: If **Nyeri H.C.C.C. No. 93 of 1985** was dismissed in 2001, then why didn't the Defendant evict the Plaintiffs until 2011 when he purported to evict them? Again that is a serious issue which cannot be taken lightly. In cases of this nature, if the order sought for is not given, the Plaintiff is likely to suffer irreparable loss in that crucial evidence may be destroyed by the Defendant thus defeating the Plaintiffs case. For the above reason, I will grant the orders sought. Consequently I allow the Motion as prayed in terms of prayers 3 and 4. Costs shall abide the outcome of the suit.

***Dated and delivered at Nyeri this 18<sup>th</sup> day of November 2011.***

**J. K. SERGON**  
**JUDGE**

In open Court in the absence of Mr. Baaru for Petitioner and Mr. Kingori holding brief Kamwenji for the Respondent.