



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

**Civil Case 85 of 2007**

**DAVID IRERI RUTERE.....PLAINTIFF**

**VERSUS**

**M'RINGATA M'NGURUKIA.....DEFENDANT**

**R U L I N G**

The Applicant is seeking injunctive orders against the respondent vide his application dated 12/11/2009. He is asking the court to preserve his land parcels Nos. MAGUMONI/THUITA/1539, 1537, 1538 and 1536 respectively pending the hearing and determination of this suit. The same is supported by the one ground on its face and on his supporting affidavit dated 12/11/2009. He claims that the respondent has been destroying temporary buildings thereon, has been cutting down coffee stems and harvesting bananas and tea leaves.

On his part, the respondent has denied committing any such acts of wanton destruction of the applicant's property. He maintains that he has only cultivated the 3 acres on which he has staked his claim for adverse possession.

Having considered the application the rival affidavits and the submissions by both counsel in court, I have arrived at the following findings:-

That the parcels of land the applicant is asking the court to preserve are actually not the parcels claimed in the pleadings herein. The suit is in respect of land parcel **No. Magumoni/Thuita/648**. The pleadings herein have not been amended to bring on board the changes on the land parcels in question. The court would not therefore interfere with land which is not the subject matter before it.

Secondly, the applicant has not established before this court that indeed the Respondent has destroyed any of his property or that he has interfered with any of his land outside the 3 acres which he is claiming by way of adverse possession. The applicant has not satisfied any of the ingredients of an injunction as laid down in the ***Grella vs Cassmen Brown*** case. He has not established at all that the respondent is interfering with his property in any way.

I decline to grant the orders sought and dismiss the application dated 12/11/2009 with costs to the Respondent therein.

**W. KARANJA**  
**JUDGE**

Delivered, signed and dated at Embu this 15th day of Feb 2010

**In presence of:-**