



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**Civil Case 79 of 2008**  
**GERALD MUTHUYIA ..... PLAINTIFF**

**VERSUS**

**SILAS MWENDA MBUI (also as legal representative of  
MBUI M'THIMBU).....1<sup>ST</sup> DEFENDANT**  
**HENRY KIRIMI MBUI ..... 2<sup>ND</sup> DEFENDANT**  
**EDWARD MAITHE'THIA MBUI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

The plaintiff has sued the defendant seeking that property *NTIMA/NTAKIRA/3190* (the suit property), belongs to him and that the defendant is holding it in trust for him. Further, he seeks the defendant's name to be canceled and the property to be registered in his name. Simultaneously, when he filed the plaint, he also filed an application dated 12<sup>th</sup> August 2008 seeking an order for injunction stopping the defendant from depositing the suit property. The court, by its ruling dated 13<sup>th</sup> November 2008 restrained the defendant as sought. The defendant has now moved to court with a chamber summons dated 22<sup>nd</sup> October 2009 seeking to discharge the injunction order. The application is based on the grounds that the plaintiff has abused the injunction order by destroying their plants which are on the suit property. They allege in that application that the plaintiff has entered into the whole property and destroyed their houses and cut down trees. The plaintiff has denied that allegation and has deponed that it is the defendant who entered into the land and destroyed his crops. He stated that he has lived on the suit property since he was born and has even buried his deceased son in that land. Justice Ouko, by his ruling of 13<sup>th</sup> November 2008, stated thus:-

***“It is common ground that the applicant is in occupation of the suit land. Prima facie, he has explained how he came in occupation which gives him the right to be there.”***

That ruling has not been appealed against. I am therefore bound by its finding. The judge found that it is the plaintiff who is in occupation/possession of the suit property. The defendant have failed to show any material change in the facts of this case since the aforesaid ruling which would justify this court discharging the injunction order. For that reason, the chamber summons dated 22<sup>nd</sup> October 2009 is dismissed and the defendant shall pay the plaintiff costs of the same.

Dated and delivered at Meru this 12<sup>th</sup> day of March 2010.

**MARY KASANGO**  
**JUDGE**