



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Environmental & Land Case 5 of 2010

BENARD MWANGI NDERITU1ST PLAINTIFF/RESPONDENT

HESBON OMONDI2ND PLAINTIFF/RESPONDENT

FRANCIS RUMANO3RD PLAINTIFF/RESPONDENT

PETER WAMBUGU4TH PLAINTIFF/RESPONDENT

STEPHEN KAMAU5TH PLAINTIFF/RESPONDENT

MARY WAMBU6TH PLAINTIFF/RESPONDENT

V E R S U S

NDIARA ENTERPRISES LTDDEFENDANT/RESPONDENT

R U L I N G

On 19th March, 2010 Justice Sitati granted the Plaintiffs' application filed on 26th January, 2010 under **Sections 3A and 63(c) and (e) of the Civil Procedure Act and Order 39 rules 1,2, and 9 of the Civil Procedure Rules** for a permanent injunction to restrain the Defendant, its servants, employees and his agents from entering the Plaintiffs from the parcel of land known as LR.No.209/9613 or demolishing or fencing in the Plaintiffs' buildings or interfering with the Plaintiffs' possession of the same, alienating, transferring, disposing off or dealing with the said suit land pending the hearing and determination of the suit. The application was heard *ex parte* on the basis that the Defendant had been served but had not filed any response.

The affidavit of service filed on 4th February, 2010 and dated the previous day shows that when the process server received the application on 27th January, 2010 he was accompanied by the 1st Plaintiff to Ruiru Town where the Defendant's offices are situated at plot No.17B/4 and met a lady called Lucy. After introduction, Lucy rung one of the Directors of the Defendant on a mobile phone following which the process server and 1st Plaintiff were requested to go to NACICO Chambers where they went and met the two directors whom the process server knew as he had served them in an earlier matter. He tendered the documents to them but they declined to sign.

It is clear from the affidavit that the names of the said two directors were not indicated. Service cannot be effective where the identity of the person being served is not indicated.

Wilson Nguithi Mugo is the Managing Director of the Defendant Company. He denied service. The other Director is William

Kiragu Nguthi. He also denied service. Wilson denied that the company has operational offices at plot No.17B/4 Ruiru. The process server did not state that this is the Defendant's registered office. Wilson stated that he has been unwell for several years and that on 8th January, 2010 he was at his residence at Thika. The date of service, according to the process server, was on 27th January, 2010.

Without service, the orders granted on 19th March, 2010 were irregular and are hereby set aside as a matter of course. The Defendant, being the party aggrieved, was not accorded the opportunity to be heard on the application.

I do not want to say that a permanent injunction cannot be granted at this interlocutory stage of the dispute.

The Defendant sought interlocutory injunction. There would be no basis in law for such an order as it has no suit or counterclaim against the Plaintiffs.

The application is allowed to that limited extent. Costs shall be paid by the Plaintiffs.

DATED AND DELIVERED AT

NAIROBI

THIS 29th DAY OF SEPTEMBER 2010

A. O. MUCHELULE

J U D G E