



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**CIVIL CASE NO. 163 OF 2009**

**STEPHEN MBUTHIA GICHURIU**

**MICHAEL MURIUKI KARIA.....PLAINTIFF/  
APPLICANTS**

**CHRISTOPHER KABURIA GICHURIU**

**VERSUS**

**JACKSON NJOGU GICHURIU.....1<sup>ST</sup>  
DEFENDANT/RESPONDENT**

**SAMMY MWANGI RUHARA.....2<sup>ND</sup>  
DEFENDANT/RESPONDENT**

**ORDER ON DIRECTIONS**

This Court heard the Summons dated 6<sup>th</sup> November 2009 and by its ruling delivered on 14<sup>th</sup> May 2010, the same was allowed in terms of prayers 2 and 4 as against the 1<sup>st</sup> Defendant but was dismissed as against the 2<sup>nd</sup> Defendant. On 4<sup>th</sup> October 2010, learned counsels appearing in this matter appeared for mention to seeking for the interpretation of this Court's ruling delivered on 14<sup>th</sup> May 2010.

It is the submission of Mr. Karweru, learned advocate for **SAMMY MWANGI RUHARA**, the 2<sup>nd</sup> Defendant, that this Court dismissed the entire suit vide the aforesaid ruling. **MR. KAMWENJI** and **LOMPO**, learned advocates for the Plaintiff and the 1<sup>st</sup> Defendant respectively, were of the view that this Court merely dismissed the application dated 16<sup>th</sup> November 2009 and not the suit in its ruling of 14<sup>th</sup> May 2010.

I have carefully considered the divergence views taken by learned counsels. There is no dispute that what was before this Court on 20<sup>th</sup> April 2010 was the Summons dated 6<sup>th</sup> November 2009 in which the Plaintiffs sought for the following orders:

1. ***“THAT service of this application be dispensed with and this application be heard ex parte in***

*the first instance.*

2. ***THAT the 1<sup>st</sup> defendant/respondent by himself, agent or anybody else working under him by temporary injunction be restrained from selling, leasing, charging, or in any other way parting with possession of land parcel No. IRIA-INI/CHEHE/1446 pending the hearing and determination of this application inter parties and or until the hearing and determination of this suit.***
  
3. ***THAT the 2<sup>nd</sup> defendant/respondent by himself, agents or anybody else working under him by a temporary injunction be restrained from selling, leasing, charging or in any other way parting with possession of land parcel No. IRIA-INI/CHEHE/1445 pending the hearing and determination of this application inter parties and or until the hearing and determination of this suit.***
  
4. ***THAT costs of this application be provided for.***

The 2<sup>nd</sup> Defendant opposed the aforesaid application by filing a replying affidavit he swore on 12<sup>th</sup> February 2010. He also put forward grounds of opposition set out as follows:

- (a) ***“THAT the suit is incurably defective having been instituted out of time for a tort of fraud.***
  
- (b) ***THAT the suit is a non-starter in law the initial registration having been by way of transmission which is not challengeable.***
  
- (c) ***THAT orders sought do not lie.***

The record shows that this court treated the aforesaid grounds as preliminary points of law against both the originating summons and the application. In the end this Court dismissed the entire application as against the 2<sup>nd</sup> Defendant. With respect, I agree with the submissions of Mr. Karweru, learned advocate for the 2<sup>nd</sup> Defendant that the correct interpretation of this Court’s ruling of 14<sup>th</sup> May 2010 is to the effect that the substantive suit (O.S. dated 6<sup>th</sup> November 2009) and the summons dated 9<sup>th</sup> November 2009 were dismissed as against the 2<sup>nd</sup> Defendant. The ruling allowed the prayers 2 and 4 as against Jackson Njogu Gichuriu, the 1<sup>st</sup> Defendant herein. It is clear that the suit against the 1<sup>st</sup> Defendant survived whereas that against the 2<sup>nd</sup> Defendant was concluded. These are the directions of this Court.

***Dated and delivered at Nyeri this 7<sup>th</sup> day of October, 2010.***

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

In open court in the presence of Mr. Karweru for the 2<sup>nd</sup> Defendant and Mr. Kioni for the Defendants and no appearance for Kamwenji for Plaintiff.