



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

Civil Case 1033 of 2006

DAUDI MWIU KIILUPLAINTIFF

V E R S U S

SYOKIMAU FARM LTD1ST DEFENDANT
DAVID NZOMO NZELE2ND DEFENDANT
KATUNGE MUSAU.....3RD DEFENDANT

R U L I N G

Now that the 3rd Defendant has an interlocutory judgment against the Plaintiff for failing to defend the counterclaim, she should set down her suit for formal proof.

In so far as the Plaintiff alleges in the plaint that he is the owner of the land in dispute and that the land was fraudulently and illegally registered in the name of the 3rd Defendant, he has a reasonable cause of action. The mere fact that the 3rd Defendant is the registered proprietor and has the protection of **section 23 (1)** of the **Registration of Titles Act (Cap.281)** does not make the Plaintiff's claim, however improbable, a frivolous or vexatious one. The request under **Order 6 Rule 13 (1) (b), (c)** and **(d)** of the **Civil Procedure Rules**, is therefore declined.

Prayer 3 of the motion dated 1st September, 2009 seeks mandatory orders which would be final in nature. Such orders will await the final resolution of the dispute.

In the meantime, however, and because the 3rd Defendant is the registered proprietor of the disputed land who has a default judgment against the Plaintiff, a restraining order of injunction is issued against the Plaintiff in terms of prayer 2 of the motion.

To that extent, therefore, the application dated 1st September, 2009 and filed on 2nd September, 2009 is allowed. Costs will await the resolution of the case.

DATED AND DELIVERED AT
NAIROBI

THIS 5TH DAY OF OCTOBER 2010

A. O. MUCHELULE

JUDGE