



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**CIVIL SUIT NO. 37 OF 2008**

**KENYA ANTI-CORRUPTION COMMISSION.....PLAINTIFF**

**VERSUS**

**MAAGUT AGENCIES LIMITED .....1<sup>ST</sup> DEFENDANT**

**SOMOGI LIMITED.....2<sup>ND</sup> DEFENDANT**

**WILLIAM SAMOEI RUTO.....3<sup>RD</sup> DEFENDANT**

**WILSON GACANJA .....4<sup>TH</sup> DEFENDANT**

**RULING**

The plaintiff brought suit against the defendants for the recovery of the suit land which it alleged was irregularly acquired. The plaintiff then obtained conservatory orders that there be no dealings with the suit land until the dispute is determined by the court.

Before the suit could be heard the 2<sup>nd</sup> and 3<sup>rd</sup> defendants took out a Preliminary Objection that the suit does not lie in lamine on the grounds that;-

1. The court lacks jurisdiction to grant the orders sought considering the absolute wordings of the statutes and as discerned from precedents that addressed the statutory provisions, some of which authorities bind the Honourable court,
2. The plaintiff's ultimate prayer for cancellation of title has not been properly presented to court and is premature,
3. The plaintiff's suit is fatally defective as there is misjoinder of parties and non-joinder of parties,
4. The plaintiff has no locus standi to sue the Defendants in the purport it has, that it is the plaintiff,
5. The plaintiff has no cause of action against the defendants in fact, equity or law (including statutory law)
6. The plaintiff estopped from seeking to approbate and reprobate on actions taken by the Government;

the Government took the measures of allocating through its lands ministry, and should be estopped from retracting and resiling from its actions through the plaintiff or at all.

Before that Preliminary Objection could be heard and more particularly vide the Kenya Gazette Notice dated 26<sup>th</sup> November, 2010 T.M. Chepkwesi, District Land Registrar Uasin Gishu cancelled the title to the suit land herein amongst many others leading to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' letter to this court dated 15/12/2010 seeking that this court be offended by the registrar's and Minister of Lands action of cancelling title while the matter was still pending in court and there was in existence conservatory orders over the suit land. Such conduct by the District Land Registrar and the minister as claimed in the print media was seen by counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and supported by counsel for the 1<sup>st</sup> defendant as contempt of the court and counsel sought that the District Land Registrar and the minister be held in contempt of court and be accordingly punished. He sought further that the matter be not stood over generally as sought by the plaintiff's counsel as that would render the defendants orphans since the court exists for the protection of all.

It is an admitted fact that the substrum of the suit herein has been compromised by the cancellation of the title to the suit property. Whether such cancellation of title amounts to contempt on the face of the court by those who cancelled title is a matter to be determined in an appropriately taken out application as is procedural. Contempt proceedings cannot be commenced vide a letter.

As to the defendants being rendered orphans by the act of the cancellation of title I have this to say. Nay, they are not rendered orphans. They can still approach court in one of various ways open to them, to proceed to have the suit heard on its merits the cancellation notwithstanding and/or to come to court through judicial review to challenge the legality of the registrar's and/or the minister's action. The choice is theirs. For now the plaintiff asks me to stand the whole matter, stood over generally. It is the plaintiff's suit and it wants it stoped. I have one option in it, to down my pen, which I hereby do, unless and until otherwise appropriately moved. The case is marked stood over generally.

**DATED SIGNED AND DELIVERED AT ELDORET THIS 23<sup>RD</sup> DAY OF DECEMBER, 2010.**

**P.M. MWILU**

**JUDGE**

**In the presence of;**

Mr. Gicheru holding brief for Angote for plaintiff

Mr. Gicheru for Interested party

Mr. Gumbo holding brief for Katwa for 2<sup>nd</sup> and 3<sup>rd</sup> defendants

Mr. Gumbo for 1<sup>st</sup> defendant

Mr. Gumbo holding brief for Limo for

Grace Court Clerk

**P.M. MWILU**

**JUDGE**