

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CIVIL APPEAL NO. 99 OF 2010

JAMES MUTHII NJOGU.....
.....APPELLANT

VERSUS

FRANCIS MUYA NJOGU.....
.....RESPONDENT

R U L I N G

The Applicant in the Application dated 21.10.2010 is seeking injunctive orders against the Respondent on Francis Muya Njogu. He is also seeking a stay of proceeding in **Wanguru SRM Civil Case No. 150/2008** pending the hearing and determination of the Appeal herein. In his supporting affidavit, he has admitted that he was sued by the Respondent herein in Wanguru SRMCC No. 150/08 whereby the Respondent sought for orders of a permanent injunction. What he has not told the court however is that the Respondent herein filed an application for interlocutory orders of injunction which he was granted by that court on 22.04.2010. A copy of the ruling is actually annexed to the Respondent's replying affidavit as annexure FMN1.

He (Applicant) has not even endeavored to explain what happened to that ruling. According to the Respondent, the same is still in force and so the instant application is engineered towards replacing that ruling. I can therefore say even without much ado that the applicant herein has not come to court with clean hands. He had deliberately failed to disclose material that he know is very relevant to this application. That disentitles him from the exercise of this court's discretion in his favour.

Other than that however, I have studied the entire file and noted the contents of the annexures thereto along with the rival submissions by counsel. I must say that if argued on its own, the preliminary objection would have failed. The issue as to whether the Appellant has locus or not ought to have been determined before the trial court where the suit has yet to be concluded. In any event the Respondent is the one who sued the Appellant before the magistrate's court and he could not have sued him if he had no locus.

On the issue as to whether the Applicant herein has a prima facie or good Appeal with chances of success, I must answer in the negative. The documents annexed herein clearly shows that the Respondent is the licensee of the rice holding in question since 5.03.02. The court cannot injunct him from his own property. He is in occupation and the law of injunctions leans to his favour. The Respondent has deposed that he has no intention whatsoever of disposing of the land in question. This therefore means that the Applicant will not be prejudiced at all if the orders he seeks are not granted. For this and the other reason that there is still a valid injunction against the applicant over the same property, the court finds application misplaced.

I find it totally lacking in merit and I dismiss the same with costs to the Applicant.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 7th day of December 2010
In presence of:- Ms Ndorongo & Nduku Nzuki for Mr. Kiama.