

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Civil Appeal 74 of 2008

M'ITIMITU M'ARANGEI APPELLANT

VERSUS

DANIEL KINYUA 1ST RESPONDENT

LAND ADJ. OFFICER (NYAMBENE MERU NORTH DISTRICT).....2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

JULIUS KAMENCHU 4TH RESPONDENT

CHARLES GITIYE (*Minor suing thro' the guardian DANIEL KINYUA*)..5TH RESPONDENT

RULING

The appellant has filed the chamber summons dated 31st July 2008. He seeks by that application an order of injunction to restrain the first, fourth and fifth respondents from constructing, fencing, or interfering with any activity on land parcels No. 5037, 5028 and 252 AKITHII III Land Adjudication section Tigania District.

In support of that application, the appellant deponed that he purchased parcel No. 252 from the 1st defendant's uncle name and that he had extensively developed it when he took possession in 1967. On that land, he built a shop, a butchery and a kiosk. He has rented these to other persons.

The first defendant filed an objection No. 326 before the Land Adjudication Committee on 17.7.1996. As a result of that objection, he was awarded 22 points of an acre from the appellant's land. Immediately that decision was made, the 1st defendant fenced the parcel of land. Where he fenced comprises of the appellant's land. As a consequence, the appellant filed CMCC No. 1072 of 1997 Meru Courts.

To enable him to do so, he obtained a consent from the Land Adjudication Officer. The defendant raised a preliminary objection relating to that consent. The lower court dismissed the plaintiff's suit in upholding that preliminary objection. The appellant appealed to the High Court in HCCA No. 94 of 2002. The appeal was successful and according to the appellant, the High Court found there was a valid consent to file the lower court case and ordered that the suit be remitted back to the lower court for the trial.

Again before the lower court, an objection was raised against the appellant suit. The lower court upheld the objection of the respondent and in so doing, according to the appellant, disregarded the High Court's judgment. The appellant has now again appealed against that dismissal.

In his replying affidavit, the first respondent stated that after his objection was heard, the parcel of

land that was in his name was 2823. That parcel was later further subdivided to 3237 and 3238. He therefore was of the view that the application before court was incompetent. The respondent denied that the High Court judgment found the consent to be varied.

I have considered the arguments raised both by the appellant and the respondent. The appellant in support of his application, relied on the case of **Suleiman V. Amboseli Resort Limited Civil case No. 1078 of 2003** where the court held:-

“When circumstances give rise to a vital question to be litigated and determined by full trial, the business of the Court, so far as possible, is to secure that any transitional motions do not render nugatory the ultimate end of justice.”

The respondent’s opposition to the appellant application was essentially to the effect that the parcels of land upon which the appellant seeks inductive orders are not in existence. The application by the appellant is made pending the hearing of the appeal. The issues relating to which parcel of land the lower court case related to, will certainly be considered at the hearing of the appeal. At this stage, in my view, the interest of justice require that orders be granted to ensure that *status quo* is maintained over the parcels of land. I have perused the High Court judgment in the appellant’s first appeal in that judgment, the court does seem to refer to parcel No. 252. That in my view suffices for this court to grant injunction. The ruling of this court is as follows:-

1. An order of injunction shall issue pending the hearing and determination of this appeal restraining the first, the fourth and the fifth respondent, their servants, agents or anybody else acting on their behalf from constructing, fencing, entering or in any manner interfering with the appellant’s activities on land parcel No. 5037, 5038 and 252 AKITHI III Land Adjudication Section Tigania District or any portion excised therefrom.

2. The costs of the chamber summons dated 31st July 2008 shall abide with the outcome of this appeal.

Dated and delivered at Meru this 16th day of July 2009.

MARY KASANGO

JUDGE