



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Civil Suit 233 of 2004**

**BENJAMIN MUTUKU KALELI .....PLAINTIFF**

**VERSUS**

**1. BOMU HEADLAM (Sued as the Adm. of Estate of  
HEADLAM S. MNENE (Deceased) And On His Own Behalf)**

**2. ISAAC RENY S. MRUTU**

**3. REMES MRUTU**

**4. NAOMI MRUTU**

**5. SHABAN KITEGI METIAKI**

**6. THE ATTORNEY GENERAL.....DEFENDANTS**

**R U L I N G**

By Chamber summons dated the 25/5/2005 the applicant seeks orders to restrain 1st ,2nd ,3rd ,4th and 5th from trespassing or in any way developing mowing cultivating or harvesting or fencing upon the said Plot No. 501 at Kimala Mata adjudication section pending hearing of this suit. Also applicant seeks order to command the Attorney General to move unto the said plot and assess the damages caused by the 5 other defendants.

The applicant has already obtained consent from the Land Adjudication office to file this suit. See exhibit "BMK1".

In supporting affidavit the applicant states that the defendants started trespassing on his land in 2001. The land adjudication has been unable to sort out the dispute saying it is of intricate nature and there is animosity between the parties. The applicant has annexed documents as exhibits to support his story.

All defendants have filed replying affidavits, which I have perused. It is clear the allegations of the applicant are supported by the officials of land adjudication department. In fact it is clear the acts of the defendants are aimed at delaying orderly land adjudication process in regard to Applicants plot. The 5 first defendants rely on technicalities aimed at obstructing the process. Upon examining the material before the court, I am satisfied that the applicant has shown a prima facie case and is entitled to interim orders under prayer (2). The allegations that suit is time barred or is not brought in compliance with Adjudication Act are just allegations subject to proof at the trial.

They are not substantiated by the first 5 defendants and these defendants denial is not with substance.

However, I decline to grant orders sought under prayer 3 leaving the same to be dealt with after evidence after trial.

It is clear the suit property is in danger of permanent degradation and this kind of damage cannot be compensated in damages.

The application is allowed to that extent. The costs of this cause are awarded to the applicant against the first five respondents/defendants.

In view of the fact that this dispute has lasted for so long. I direct the parties to comply with discovery and framing issues so as to bring this suit to trial within the next 6 months from today.

**Delivered and dated at Mombasa this 16th day of September 2005.**

**J. KHAMINWA**

**J U D G E**