



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL MISCELLANEOUS APPLICATION NO. 19 OF 1999

MWITHYA KITHU ::::::::::::::::::::::::::::::::::::::: 1 ST APPLICANT

KALOKI ITUTE ::::::::::::::::::::::::::::::::::::::: 2 ND APPLICANT

MASIKA KITHU ::::::::::::::::::::::::::::::::::::::: 3 RD APPLICANT

MICHAEL MUKOLYA ::::::::::::::::::::::::::::::::::::::: 4 TH APPLICANT

VERSUS

LAND DISPUTE TRIBUNAL MACHAKOS ::::::::::::::: RESPONDENT

Coram: J. W. Mwera J.
D. Mutinda Advocate for Applicant
Makau O. Advocate for Respondent
C.C. Muli

RULING

Under O.39 rr. 1, 2 Civil Procedure Rules the litigants Henry and Boniface Mulwa desire in their application dated 20.11.2000 this court to grant them an injunction against their adversaries – Muithya, Masika, Nzwili, Mukolya and Kaloki. That they should not interfere with certain land parcels Nos. MUTHETHENI/KYETHIVO/207,209 that were a subject in Machakos Land Disputes Tribunal Case No. 150/1996.

From the record, after that tribunal made a decision Muithya and his group filed an application for the orders of certiorari dated 16.2.98 – still pending.

This court was made to understand that in the meantime the Muithya group is cutting trees and in a way apportioning the disputed land among themselves. To believe this, the court was asked to visit the land to ascertain for itself. That was Mr. D. Mutinda’s thrust of argument for temporary injunction otherwise his clients stood to suffer loss and prejudice.

Mr. O. Makau’s view was that his clients have always lived, cultivated and carried out normal activities over the land in issue. They had not procured any land control board consent, followed by other necessary processes to attempt to demarcate and apportion to themselves the land in issue. That save to ask the court to visit the land, no evidence was placed before it to urge it to issue the desired injunction.

Having heard both sides this court is not inclined to grant orders as prayed. It is not satisfied that a prima facie case has been made out. The application is dismissed and parties are advised to fix a date for the substantive notice of motion's final disposal. It has been here for some three years and no doubt some friction among the litigants is bound to arise.

In sum the application is dismissed with costs. Parties to fix dates to hear the application for certiorari without any more other applications.

Orders accordingly.

Delivered on 28th February 2001.

J. W. MWERA

JUDGE