



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO.2078 of 1999**

**KIHIU MWIRI FARMERS COMPANY LTD..... PLAINTIFFS**

**VERSUS**

**SOLOMON KARUGU MUGWERU & 3 OTHERS ..... DEFENDANT**

**R U L I N G**

On 19/10/1999 the applicants filed this suit against the respondents seeking a number of reliefs including a permanent injunction restraining the respondents either by themselves, their agents, and/or servants from entering, the applicants land parcel NO.9214.

On 21/10/1999 the applicant took out a chamber summons under order 39 r r1 and 2 of the Civil Procedure Rules seeking orders to restrain the respondents from entering cultivating cutting trees or on any way interfering with the applicants land NO. LR 9214.

Counsel for the respondents raises a preliminary objection on the grounds that both the applicants and the respondents are currently residing, cultivating and growing crops on the suit land by virtue of being shareholders. Secondly that the application is totally defective and bad in law and does not conform with Order L rr 3 and 15(2) of the Civil Procedure Rules.

If the respondents defence is that they are residing and cultivating the suit land then an order to restrain them from entering would not be appropriate.

The court cannot restrain a party from entering the suit land when he is already there. This would be a futile exercise. On the second issue raised by counsel for the applicant counsel for Applicant concedes that his application did not comply with the provisions of O L R3 and 15(2) of the Civil Procedure Rules. O L r3 provides as follows:-

***“Every notice of motion shall state in general terms the grounds of the application - - -“***

And O L R15 (2) provides as follows:- Every motion and summons shall bear at the foot words – “If any party served does not appear at the time and place above-mentioned such order will be made and proceedings taken as the court may think just and expedient.”

These provisions are mandatory and failure to comply with the same makes the application defective.

For the above reasons the preliminary objections is upheld and the application is consequently dismissed with costs.

**Dated and delivered at Nairobi this 11th day of March, 2000**

**J.L.A. OSIEMO**

**JUDGE**