



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. E003 OF 2021**

**IRVINE MWENDA JAPHET.....PLAINTIFF**

**VERSUS**

**WILBERFRCE MICHENI.....1<sup>ST</sup> DEFENDANT**

**LISBETH KAIMURI .....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This application states on its face that it has been brought to court pursuant to Section 68(1) of the Land Registration Act, Order 40 Rules 1 & 2 of the Civil Procedure Rules, 2010 and section 63(e) of the Civil Procedure Act.

2. The application seeks the following **orders**:

**1. THAT** this application be certified urgent.

**2. THAT** pending the *interpartes* hearing of this application an order of temporary injunction do issue restraining the defendants whether by themselves or through their agents, servants, employees, assigns or anybody else acting at their behest and interest from entering, occupying, cultivating, farming, fencing or in any other manner whatsoever interfering with the plaintiff's peaceful and uninterrupted occupation of L.R. NO. MWIMBI/CHOGORIA/4652.

**3. THAT** pending the *intepartes* hearing of this application an order of inhibition do issue restraining the registration of dealings in respect of L.R. NO. MWIMBI/ CHOGORIA/4652.

**4. THAT** pending the hearing and determination of this application and the main suit an order of temporary injunction do issue restraining the defendants whether by themselves or through their agents, servants, employees, assigns or anybody else acting at their behest and interest from entering, occupying, cultivating, farming, fencing or in any other manner whatsoever interfering with the plaintiff's peaceful and uninterrupted occupation of L.R. NO. MWIMBI/ CHOGORIA/4652.

**5. THAT** pending the hearing and determination of this application and the main suit an order of inhibition do issue restraining the registration of dealings in respect of L.R. NO. MWIMBI/CHOGORIA/4652.

3. The application is buttressed by the affidavit of Irvine Mwenda Japhet sworn on **18<sup>th</sup> May, 2021** which states;

**1. THAT** the Defendants/Respondents are the registered owners of the suit land.

**2. THAT** the Plaintiff/Applicant has been in exclusive occupation of the suit land and has been in such occupation for a period exceeding the statutory twelve (12) years.

**3. THAT** recently the Defendants have entered the suit land and dug up holes in readiness for planting prompting the Plaintiff to discover that the same had changed ownership.

**4. THAT** the Plaintiff/Applicant has lodged a claim predicated on the doctrine of adverse possession in respect of the suit land.

**5. THAT** the Plaintiff/Applicant is apprehensive that the Defendants/Respondents shall deal with the suit land in order to defeat his

claim

**6. THAT** it is thus imperative that the suit land is preserved pending the determination of the issues at variance between the parties.

**7. THAT** the Plaintiff's suit has a high chance of success.

**8. THAT** the Defendants shall not suffer any prejudice or inconvenience if the orders sought are granted.

**9. THAT** further, the instant orders are sought in order to advance the course of justice.

4. At the ex parte stage ONLY prayer 3 for inhibition pending interpartes hearing of this application is granted.

5. The plaintiff is directed to serve the application upon the defendants within **14 days of today**.

6. The application will be heard interpartes on **7<sup>th</sup> June, 2021**.

**DELIVERED IN CHAMBERS THIS 19<sup>TH</sup> DAY OF MAY, 2021 IN THE PRESENCE OF:**

**CA: NDEGWA**

**P. M. NJORGE,**

**JUDGE.**