



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC NO.152 OF 2012**

**FRANCIS THUKU GAKOMO.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**STEPHENSON KARUGI KAGO.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**JOSEPH GITAU NJOKI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**PAULINE NJOKI IGOGO.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**HANNAH NJAMBI NDIRO.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**ROBERT WANGENDO NDIRO.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 11<sup>th</sup> January 2021 brought under section 152 E of the Land Act, 2012, ELC Act Section 13(1) and (2), Section 1, 3 and 63, order 21, 22, 26, 38, 40, 48 order 51 of the Civil Procedure Rules and the Civil Procedure Act and all enabling provisions of the law.

2. It seeks orders:-

**1. Spent.**

**2. That this honourable court be pleased to issue a permanent injunctive order restraining the 1<sup>st</sup> Defendant herein Joseph Gitau Njoki by himself, servants, employees, agents or any other persons acting under their instructions or their interests from entering, interfering with the Applicant's entry, occupation and possession, otherwise dealing, entering, remaining, trespassing or in any other manner interfering with all that parcel of land known as Kiambaa/Ruaka/611 and Kiambaa/Ruaka/1075.**

**3. That this Court do issue eviction orders against the 1<sup>st</sup> Defendant herein Joseph Gitau Njoki being that he is trespassing on the Applicant's land all that parcel of land known as Kiambaa/Ruaka/611 and Kiambaa/Ruaka/1075 and to deliver vacant possession to the Applicant.**

**4. That the Defendant be restrained from interfering with the Plaintiff's use of land and that parcel of land known as Kiambaa/Ruaka/611 and Kiambaa/Ruaka/1075 or any other of the Plaintiff's properties.**

**5. That in the alternative to prayer (1) above the plaintiff do cause the removal of all the structures on the suit premises constructed by the 1<sup>st</sup> Defendant and the costs of the removal and eviction be borne by the 1<sup>st</sup> Defendant herein.**

**6. That this honourable court be pleased to direct the Officer Commanding Rweno Police Post to provide security to the Applicants while evicting the Respondents and/or any other trespasser(s) from the Applicant's parcel of land known as Kiambaa/Ruaka/611 and Kiambaa/Ruaka/1075.**

**7. That the 1<sup>st</sup> Defendant be ordered to pay and or deposit a sum of Kshs.100,000/- in this honourable court from the date of Judgement in this matter as the loss and mesne profits and or rental income collectable for the area occupied by the 1<sup>st</sup>**

*Defendant and for the financial loss that the Plaintiffs' are suffering owing to 1<sup>st</sup> Defendant continued illegal commercial use and occupation of their parcel of land.*

*8. That this honourable court do issue any other relief they deem fit to grant in the interest of justice.*

*9. That the costs of the suit and this application be borne by the Defendant/Respondent.*

3. The grounds are on the face of the application and are set out in paragraphs 1 to 4.
4. The application is supported by the affidavit of Francis Thuku Gakumo, the 1<sup>st</sup> Plaintiff/Applicant herein, sworn on the 11<sup>th</sup> January 2021.
5. The Application is not opposed.
6. This court stayed the proceedings in this matter pending the hearing and determination of HCCC No 1995 of 98.
7. This court on 11<sup>th</sup> June 2020 delivered a Judgment declaring the Plaintiffs as legal and/lawful owners of the suit property.
8. The facts as presented by the Plaintiff's case has not been controverted. I find merit in this application and the same is allowed in its entirety.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 2ND DAY OF DECEMBER 2021.**

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**L. KOMINGOI**

**JUDGE**

**IN THE PRESENCE OF:-**

**MR. KARIU THE PLAINTIFFS**

**NO APPEARANCE FOR THE DEFENDANTS**

**STEVE - COURT ASSISTANT**