



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT EMBU**

**ELC CASE NO. 23 OF 2014**

SIVILIUS KITHUCI NJUKI.....1<sup>ST</sup> PLAINTIFF  
 ESBON NGANGA WAMBUGU.....2<sup>ND</sup> PLAINTIFF  
 NGAI KAREIYU.....3<sup>RD</sup> PLAINTIFF  
 IRERI RUMINJO.....4<sup>TH</sup> PLAINTIFF

**VERSUS**

ALICE NJUKI MUKONO (Sued as the Legal Representative of NJUKI MUKONO (Deceased))  
 .....1<sup>ST</sup> DEFENDANT

JOHN NJAGI KIRANGI.....2<sup>ND</sup> DEFENDANT  
 GATERI MACHANGA.....3<sup>RD</sup> DEFENDANT  
 LAWRENCE NJIRU KIRANGI.....4<sup>TH</sup> DEFENDANT  
 JOHN NGARI MBANDA.....5<sup>TH</sup> DEFENDANT  
 JULIUS IRERI NJUKI.....6<sup>TH</sup> DEFENDANT  
 JAMES NJUE NTHIGA.....7<sup>TH</sup> DEFENDANT  
 DAVID NJERU KIURA.....8<sup>TH</sup> DEFENDANT  
 JAMLECK KITHU GITITI.....9<sup>TH</sup> DEFENDANT  
 JOHN KARIUKI NJUKI.....10<sup>TH</sup> DEFENDANT  
 WILLIAN MACHAKI GICHONI.....11<sup>TH</sup> DEFENDANT  
 GIDEON GITONGA IRERI.....12<sup>TH</sup> DEFENDANT

**AND**

PETER MACHARIA MWANGI.....INTERESTED PARTY

## RULING

I have before me an application dated 18<sup>th</sup> August 2015 brought under **Order 1 Rule 8 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act** in which the applicant (**PETER MACHARIA MWANGI**) seeks the main order that he be enjoined in these proceedings. According to his affidavit in support of this application, the applicant has deponed in paragraph 2 thereof that he is the registered owner of land parcel No. NTHAWA/SIKAGO/1662 which is the subject of the suit yet he has discovered that there is a restraining order issued against the said land. He has annexed a copy of the Title Deed to the land and the restraining order – annexures **PMM1** and **2** respectively.

The 6<sup>th</sup> defendant/respondent (**JULIUS IRERI NJUKI**) has sworn a replying affidavit in opposition to the application in which he depones, inter alia, that in fact the applicant's title to the parcel No. NTHAWA/SIKAGO/1662 was cancelled by an order of the Court on 26<sup>th</sup> September 2005 and no appeal was filed against that order which is entry number 6 in the title.

The plaintiffs/respondents through their advocates Mr. Okwaro did not object to the application.

**Order 1 Rule 10(2) of the Civil Procedure Rules** provides as follows:-

***“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all questions involved in the suit be added”***

From the plaint filed herein on 16<sup>th</sup> April 2008, the plaintiffs, who have not opposed this application, were seeking orders to cancel the registration of the named defendants as owners of some named land parcels and re-store some named persons as owners thereof. There is also an order seeking a permanent injunction to restrain the defendants from entering, using, occupying, cultivating or in any other way interfering with various parcels of land among them land parcel No. NTHAWA/SIKAGO/1662 which the applicant says is registered in his names and he has annexed a copy of the title deed. The 6<sup>th</sup> defendant says that registration was cancelled. I have looked at the orders cancelling that registration. It was issued by the Land Disputes Tribunal in Case No. 55 of 2000. Clearly, a **Land Disputes Tribunal** under the now repealed **Land Disputes Tribunal Act** had no jurisdiction to cancel a title and so that will be an issue for trial. For purposes of this application however, and on the basis of that title, the applicant is entitled to enjoy all the rights and privileges that are appurtenant to that registration until the same is impugned by a competent Court.

In opposing this application, the 6<sup>th</sup> defendant has deponed in paragraph 6 of his replying affidavit that the suit is filed by the plaintiffs on behalf of the **MBUYA** clan of the Mbeere Tribe and so the applicant's interest is well safe guarded by the clan representatives. A casual look at the plaint shows that plaintiffs have filed this suit in their own names and not as representatives of the Mbuya Clan. They only plead to be members of that clan but certainly are not suing as the clan's representatives. The law allows any person ***“whose presence before the Court may be necessary in order to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit be added”***. By virtue of being the registered proprietor of land parcel number NTHAWA/SIKAGO/1662 which is a subject in these proceedings, the applicant clearly has an unassailable right to be enjoined in these proceedings. To shut him would result in this Court making a decision over property registered in his names without affording him a hearing. That would be un-lawful and an affront to **Article 40 of the Constitution** which protects the applicant's right to own property. If the 6<sup>th</sup> defendant believes that he has a better title to the said property, that will be a matter for the trial Court to determine. For now, the applicant has satisfied this Court that he is entitled to be enjoined in these proceedings.

Ultimately therefore, the application dated 18<sup>th</sup> August 2015 and filed hereon on 11<sup>th</sup> September 2015 is allowed. Costs shall be in the cause.

**B.N. OLAO**

**JUDGE**

**1<sup>ST</sup> APRIL, 2016**

Ruling delivered in open Court this 1<sup>st</sup> day of April 2016

Mr. Mutali for Applicant present

No appearance for the Plaintiffs or Defendants.

**B.N. OLAO**

**JUDGE**

**1<sup>ST</sup> APRIL, 2016**