



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO . 4 OF 2014

JOSEPH KIRIAMBURI M'LINYIRU.....PETITIONER

VERSUS

FLORAH KENDI.....1ST APPLICANT/RESPONDENT

MARGARET KAWIRA.....2ND APPLICANT /RESPONDENT

IGEMBE DISTRICT LANDS &

SETTLEMENT OFFICER.....3TH APPLICANT/RESPONDENT

THE HONORABLE ATTORNEY GENERAL....4TH APPLICANT/RESPONDENT

R U L I N G

1. This application filed Under Order 40 Rules, 1, 2 and 3 of the Civil Procedure Rules, Section 17(1) of the Environment and Land Court Act and other enabling provisions of the Law is dated 12th July, 2016.

2. The application seeks orders:-

exist

1. THAT this Honourable Court be pleased to certify this application as urgent and order that the same be heard EXPARTE in the first instance due to its urgency.

2. THAT this Honourable Court be pleased to issue an order of temporary injunction restraining the petitioner/respondent herein by himself, his agents and or servants from entering, cultivating, harvesting the respondents Miraa and or in any other way interfering with 1st and 2nd respondents Land Parcel No. 10543, curved from the original Land Parcel No. 4824 AKIRA NGONDU ADJ. SECTION, till this applicant is heard and determined inter parties.

3. THAT this Honourable Court be pleased to issue an order of temporary injunction restraining the petitioner/respondent herein, by himself, his agents and or servants from entering, cultivating and harvesting the respondents Miraa and or in any other way interfering with the 1st and 2nd respondents Land Parcel No. 10543 (curved) from the original Land Parcel No 4824 AKIRA NGONDU ADJ. SECTION till this petition is heard and determined.

4. That the Court do issue such and further orders that befits the interest of justice.

5. That costs of this application be provided for.

3. The application is supported by the affidavit of Flora Kendi, the 1st Respondent and has the following grounds:-

a. That immediately objection No. 3930 which was in favour of the respondent, the Original Land Parcel No 4824 was curved in implementation of the Judgment and given to the applicants bearing new number No. 10543 measuring 0.24 Acres.

b. THAT the decision having been implemented, the respondents took possession and started lucking Miraa trees therein.

c. That the respondent/petitioner rushed to Court, filed this petition and obtained exparte orders on 5th March, 2014 but signed on 11th March, 2014.

d. THAT on 20th March, 2014 the said Exparte order lapsed as they did not comply with the law.

4. The Supporting Affidavit of Flora Kendi sworn on 12th July, 2016 says:-

I FLORA KENDI of P.O Box 323 MAUA within the Republic of Kenya do make oath and state as follows:-

1. THAT I am a female adult of sound mind capable of swearing this affidavit.

2. THAT I have authority from the 2nd respondent to swear on her behalf.

3. That the petitioner/respondent herein is our uncle.

4. THAT our grand father who is also the father of the petitioner/respondent was the original registered owner of Land Parcel No. 4824 AKIRA NGONDU ADJUDICATION SECTION.

5. THAT the said grandfather subdivided his land to his children as follows:-

i. Moses Kobia Rinyiru.....0.24

ii. Joseph M'Miaka0.24

iii. Silas Batora.....0.24

iv. Kagwine M'Rinyiru.....0.24

v. The Late M'Muunu M'Rinyiru....0.24

vi. Joseph Kiramburi0.24

6. THAT the late Muunu M'Rinyiru is our father.

7. THAT our uncle the petitioner herein got his share 0.24 points and that of our father M'Muunu M' Rinyiru measuring 0.24 points all totaling to 0.48 in trust for us.

8. THAT our father died while we were very young while our mother was chased away too.

9. THAT we were taken care of by one Mutiria Jacob until we grew up.

10. THAT subsequently we filed objection case No. 3930, and the Court ruled in our favour but erroneously ruled that the same be registered in joint names.

11. ***THAT presently we are orphans and the Petitioner wants to take advantage of our plight to deprive us our share.***
12. ***THAT the judgment in objection case No 3930 was fully implemented by curving a portion measuring 0.24 from and we took possession of the same portion measuring 0.24 points.***
13. ***THAT the portion is planted with Miraa trees which we started plucking to thrive a living for ourselves.***
14. ***THAT the Petitioner after realizing that he was late to prefer any appeal, rushed to court to stop us from plucking Miraa.***
15. ***THAT the respondent/petitioner obtained an Exparte order on 5th March , 2014, but signed on 11th March, 2014.***
16. ***THAT when we were served we plus our Lawyer attended Court on 20/03/2014 when the same orders were said to have lapsed as a matter of law.***
17. ***THAT we resumed plucking and possession of the portion which we do to date.***
18. ***THAT recently on 01/06/2016 the petitioner came to the Land in question, destroyed the barbed wire fence and attempted to prevent us from entering the land.***
19. ***THAT I reported the matter to Muringene Police Post who came to the Land and took photos . Annexed are copies of the same marked FK-01 a,b,c,d,e,f,g,h,i,j & k respectively.***
20. ***THAT after reporting to the Police vide OB 9/1/6/2016 I was advised by the Police to seek assistance from Court since there was a court case pending . Annexed is a copy of the letter from Muringene Police Post marked FK-02.***
21. ***That the said Miraa is our only source of income and if we deprived them we stand to suffer irreparably.***
22. ***THAT the Petitioner has his own portion with Miraa and he should confine himself to his portion of 0.24 points.***
23. ***THAT I swear this affidavit in support of the application herein.***
24. ***THAT whatever is deponed to herein is true to the best of my knowledge and belief.***

5. The Application was to be heard Interpartes on 06/09/2016.

6. Mr. Leonad K. Ondari, the applicant's Advocate informed the Court that the Petitioner had been served with the apposite hearing date but he and/or his Advocate had not come to Court as expected. He referred the Court to an Affidavit of Service sworn by a Process Server called Catherine Mworira on 2nd September, 2016 and filed on 5th September, 2016. He asked the Court to grant the orders sought in this application.

7. The Court is satisfied that the Petitioner was aware of the apposite interpartes hearing date fixed by the Court for hearing of this application.

8. Having perused the apposite pleadings, I find that the orders sought merit being granted at this interlocutory stage.

9. Prayer 3 is granted pending hearing and determination of the Petition.

10. Costs shall be in the cause.

11. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 14TH DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF;-

CC: Daniel/Lilian

Onderi present for 1st and 2nd Applicants

Petitioner -Absent

P. M. NJOROGI

JUDGE