



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**E & L CASE NO 225 OF 2016**

**ETHICS AND ANTI-CORRUPTION COMMISSION.....PLAINTIFF**

**VERSUS**

**GODFREY KAMITL.....1ST DEFENDANT**

**AKWALU M'LINTARE.....2ND DEFENDANT**

**THE ATTORNEY GENERAL.....3RD DEFENDANT**

**R U L I N G**

1. This application is dated 4th November, 2016 and seeks orders:-

- 1. This application be certified as urgent and fit for admission to hearing on priority basis.***
- 2. The Honourable Court be pleased to issue a temporary injunction to restrain the defendants by themselves, their agents, servants, associates and/or any other person claiming the parcel of land known as Meru Ex Lewa 719 (the suit property) through them or under them from accessing , occupying, developing, leasing, charging, selling, disposing off, transferring, wasting, utilizing, using and/or in any other manner whatsoever dealing with the suit property pending the hearing and determination of this suit.***
- 3. The Honourable Court be pleased to issue a temporary injunction to restrain the defendants by themselves, their agents, servants, associates and/or any other person claiming the parcel of land known as Meru Ex Lewa 719 (the suit property) through them or under them from accessing, occupying, developing, leasing charging, selling, disposing off, transferring, wasting, utilizing, using and/or in any other manner whatsoever dealing with the suit property pending the hearing and determination of this suit.***
- 4. Costs of this application to be paid by the respondents.***

2. The application is supported by the Affidavit of Leonard N. Mungai sworn on 4th November, 2016 and has the following grounds: -

***a. That in exercise of its mandate under Section 11 (j) of the Ethics and Anti Corruption Commission Act, 2011, the applicant has carried out investigations concerning alleged irregularities and breach of the law in alienation of the suit property from a public utility to a private utility.***

*b. That the investigations have revealed that the property was set apart as a public utility, to wit, a Cattle Dip, and to that extent unavailable for alienation to private individuals.*

*c. The investigation further revealed that there existed a scheme between the respondents and some public officials to irregularly, fraudulently, illegally and unlawfully to transfer the public/community utility herein to private individuals.*

*d. That the respondents with support of some public officers managed to irregularly, fraudulently, illegally and unlawfully transfer the public/community utility herein to an amorphous entity known as Buuri Cattle Dip Self Help Group.*

*e. That while the entity herein is not a legal person, hence unable to acquire, own and transfer property to itself or any other person; investigations have revealed that the entity herein, under the leadership or direction of the respondents has caused the suit property to be sub-divided into 48 parcels of land in readiness for further alienation of the property.*

*f. That investigations have shown that the suit property was from inception a public/community property and to that extent unavailable for alienation to private individuals or for private use.*

*g. That unless restrained by way of the orders herein sought the respondents intend to transfer the suit property to the members of the entity called Buuri Cattle Dip Self Help Group and to that extent to totally defeat the objects for which the property was set apart.*

*h. That in order to protect the property from further alienation and dissipation by the respondents, their agents, servants and associates it is just and mete to grant the orders sought.*

*i. That the respondents and their associates, who since 1990 have never been in occupation of the suit property, will suffer no prejudice if the orders sought are granted.*

*j. That the orders sought should be granted to protect public interest.*

3. On 23rd November, 2016, the advocates representing the parties proffered a consent and asked the Court to adopt it as its order.

4. The Consent is dated 23 November, 2016 and is in the following terms:-

By Consent:-

***“Pending hearing and determination of the suit, the Honourable Court be and hereby pleased to prohibit the defendants by themselves or their agents, servants, associates and any other person with a private interest in P/No EX- LEWA SETTLEMENT SCHEME/719 and registered in favour of Buuri cattle Dip self help group from selling, alienating, transferring, charging, subdividing, taking possession, developing or in any similar manner dealing with the said land with a rider that the one (1) person occupying a house thereon will not be evicted from the house and the small portion of the suit property forming the compound of the house”.***

5. The Consent is adopted as an order of this Court.

6. Suit No. Misc. App ELC 15 of 2016 is marked as settled and to be removed from the register of pending cases.

7. It is so ordered.

**DELIVERED IN OPEN COURT AT MERU THIS 6th DAY OF DECEMBER, 2016 IN THE PRESENCE OF:-**

C.A : James /Daniel

Carl Peters Mbaabu for E. Kimathi for 1st and 2nd defendants.

Kiongo for 3rd Defendant

Edwin Kimathi for the Defendants

**P. M. NJOROGE**

**JUDGE**