



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL CASE NO. 232 OF 2011**

**JANE WANJIRA KIMANI ..... PLAINTIFF**

**VERSUS**

**1. KAMAU THIRU NGUTHIRU  
2. THE TOWN CLERK OLKEJUADO COUNTY  
3. THE OLKEJUADO COUNTY COUNCIL ..... DEFENDANTS**

**BENSON WARINGU THIGU ..... INTERESTED PARTY/APPLICANT**

**R U L I N G**

1. The application dated 10/7/2013 is brought under **Order 40 Rule 1** of the **Civil Procedure Rules Section 3A** of the **Civil Procedure Act** and all enabling powers of the court and provisions of the law.
2. The application seeks the following orders:-
  1. **“(Spent).**
  2. **(Spent).**
  3. **That the Interested Party be enjoined as a party to this suit.**
  4. **That the court be pleased to direct that a surveyor from the 3<sup>rd</sup> Defendant visit the area and point out residential plot No. 521 to the Interested Party and residential Plot No. 522 to the Plaintiff.**
  5. **That the cost of this application be provided for.”**
3. The Applicant’s case according to the affidavit in support sworn on 10/7/2013 is that the Applicant is one of the administrators of the estate of his late mother **Njeri Thiru Ngithiru** who was the administrator of the estate of the Applicants late father, **Thiru Ngithiru**. That the Applicant’s late father was the owner of plot **No. 521 at Ongata Rongai** within **Olekejuado County Council**, the plot having been allocated to her in the year 1978. The Applicant claims that it was the Respondent’s father who trespassed into the plot No. 521 which resulted to the filing of **HCCC 2706/94, HCCC 1857/2001** and **2165/2007** prior to the filing of the instant suit. According to the Applicant, the Respondent filed the case herein against a non-existent party.
4. When the application came up for hearing on 8/10/13 there was no attendance for the Plaintiff or the Defendants through served. No papers were filed in opposition to the application. The application is therefore not opposed.
5. I have considered the application. It is noted that the Plaintiff’s claim is in regard to **plot No. 522** while the Interested Party claims **plot No. 521**. These being adjacent plots, it would serve the interests of justice to allow the orders sought. Consequently, I allow the application with costs in cause.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Machakos this **12<sup>th</sup>** day of **March 2014**.

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**B. THURANIRA JADEN**

**JUDGE**