



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**E.L.C. NO. 48 OF 2019**

**ALBERT NGANGA KITHUA.....PLAINTIFF**

**VERSUS**

**BERNARD MUCINDOH.....1<sup>ST</sup> DEFENDANT**

**SILAS NJIRU NYAGA.....2<sup>ND</sup> DEFENDANT**

**JAMES MURIITHI NDUTI.....3<sup>RD</sup> DEFENDANT**

**MICHAEL NYAGA IRORI.....4<sup>TH</sup> DEFENDANT**

**JOSHUA MUGO KINGANGI.....5<sup>TH</sup> DEFENDANT**

**JULIANA IROBO.....6<sup>TH</sup> DEFENDANT**

**JOHN NGARI MWANGI.....7<sup>TH</sup> DEFENDANT**

**JOSEPH NGARI NTHIGA.....8<sup>TH</sup> DEFENDANT**

**RICHARD WACHIRA MUGO.....9<sup>TH</sup> DEFENDANT**

**JOHN NYAGA MWANDIKE.....10<sup>TH</sup> DEFENDANT**

**JOHNSON NJIRU IRERI.....11<sup>TH</sup> DEFENDANT**

**SOSPETER MURIUKI IRERI.....12<sup>TH</sup> DEFENDANT**

**ANTHONY KITHAKA BERNARD.....13<sup>TH</sup> DEFENDANT**

**NICASIO NJIRU NYAGA.....14<sup>TH</sup> DEFENDANT**

**VIGINIA MBUYA MURIUKI.....15<sup>TH</sup> DEFENDANT**

**NJIRU NTHIGA.....16<sup>TH</sup> DEFENDANT**

**BARNABAS MUSYOKA NTHIGA.....17<sup>TH</sup> DEFENDANT**

**JOSEPH NJUE NDUURI.....18<sup>TH</sup> DEFENDANT**

**JOSEPH NJERU ITHA.....19<sup>TH</sup> DEFENDANT**

**SOSPETER NJAGI KIURA.....20<sup>TH</sup> DEFENDANT**

ELIZABETH MBOCI NTHIGA.....	21 <sup>ST</sup> DEFENDANT
GODFREY NJUKI EPHANTUS.....	22 <sup>ND</sup> DEFENDANT
BENJAMIN NYAGA NTHIGA.....	23 <sup>RD</sup> DEFENDANT
MBANDI CLAN TRUSTEES.....	24 <sup>TH</sup> DEFENDANT
ANTONY MURIUKI NDII.....	25 <sup>TH</sup> DEFENDANT
JONATHAN NJUKI IRERI.....	26 <sup>TH</sup> DEFENDANT
BERNARD KARIUKI MUNYI.....	27 <sup>TH</sup> DEFENDANT
BENJAMIN NYAGA IRERI.....	28 <sup>TH</sup> DEFENDANT
ANTHONY NJIRU NJUE.....	29 <sup>TH</sup> DEFENDANT
PETER MURIITHI MURIUKI.....	30 <sup>TH</sup> DEFENDANT
PETERSON KARIUKI MUNYI.....	31 <sup>ST</sup> DEFENDANT
AMBROSE NJIRU NTHIGA.....	32 <sup>ND</sup> DEFENDANT
ROBERT NJIRU KITHINJI.....	33 <sup>RD</sup> DEFENDANT
BERNARD NJAGI MUNYI.....	34 <sup>TH</sup> DEFENDANT
<b>CABINET SECRETARY, LAND, HOUSING</b>	
AND URBAN DEVELOPMENT.....	35 <sup>TH</sup> DEFENDANT
<b>DEPUTY COUNTY COMMISSIONER,</b>	
MBEERE SOUTH.....	36 <sup>TH</sup> DEFENDANT
<b>REGIONAL GOVERNMENT SURVEYOR</b>	
MBEERE NORTH AND SOUTH.....	37 <sup>TH</sup> DEFENDANT
THE LAND ADJUDICATION OFFICER, MBEERE.....	38 <sup>TH</sup> DEFENDANT
THE ATTORNEY GENERAL.....	39 <sup>TH</sup> DEFENDANT

## RULING

### **A. INTRODUCTION**

1. By a plaint dated 29<sup>th</sup> November 2019, the Plaintiff who claimed to have sued on behalf of members of Rukonjo house of Rweru clan challenged the process by which the 1<sup>st</sup> – 34<sup>th</sup> Defendants were registered as proprietors of the various suit properties specified therein. In particular, the Plaintiff sought a declaration that the decisions of the Minister for Lands in *Ministers Land Appeal Case Nos. 141 of 1996, 143 of 1996 and 161 of 1996* were contradictory, inconsistent, unclear and incapable of being implemented. They sought nullification of the titles held by the 1<sup>st</sup> – 34<sup>th</sup> Defendants over the suit properties and a declaration that members of Rweru clan were entitled to 198 acres described in the Minister’s decisions in the said 3 appeals.

2. Vide a notice of motion dated 12<sup>th</sup> February 2020 expressed to be brought under **Order 51** of the **Civil Procedure Rules, Sections 1A, 1B & 3A** of the **Civil Procedure Act (Cap. 21)** and **Section 68** of the **Land Registration Act, 2012** the Plaintiff sought the following orders:

*a. That the honourable court do inhibit any dealings with parcels of land NOs. Mbeere/Kirima/4306, Mbeere/Kirima/4308, Mbeere/Kirima/4779, Mbeere/Kirima/4284, Mbeere/Kirima/4282, Mbeere/Kirima/4291, Mbeere/Kirima/4304, Mbeere/Kirima/4303, Mbeere/Kirima/4292, Mbeere/Kirima/4299, Mbeere/Kirima/4310, Mbeere/Kirima/4311, Mbeere/Kirima/4307, Mbeere/Kirima/5627, Mbeere/Kirima/4309, Mbeere/Kirima/4287, Mbeere/Kirima/4313,*

Mbeere/Kirima/4302, Mbeere/Kirima/4296, Mbeere/Kirima/4300, Mbeere/Kirima/4780, Mbeere/Kirima/4297,  
Mbeere/Kirima/4781, Mbeere/Kirima/4295, Mbeere/Kirima/4316, Mbeere/Kirima/4298, Mbeere/Kirima/4782,  
Mbeere/Kirima/4286, Mbeere/Kirima/4290, Mbeere/Kirima/4294, Mbeere/Kirima/4283, Mbeere/Kirima/4281,  
Mbeere/Kirima/4289, Mbeere/Kirima/4306, Mbeere/Kirima/4306, Mbeere/Kirima/4273, Mbeere/Kirima/4306,  
Mbeere/Kirima/4317, Mbeere/Kirima/4315, Mbeere/Kirima/5626, Mbeere/Kirima/3361 and Mbeere/Kirima/3365.

b. That costs of the application be provided for.

## **B. THE PLAINTIFF'S CASE**

3. The said application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Albert Nganga Kithua on 12<sup>th</sup> February 2020 and the annexures thereto. It was contended that the various suit properties currently registered in the name of the 1<sup>st</sup> -34<sup>th</sup> Defendants rightfully belonged to members of the Plaintiff's Rweru clan and that there was a danger of being alienated by the Defendants during the pendency of the suit challenging the manner in which the Defendants were registered as proprietors. The Plaintiff further contended that members of Rweru can shall suffer irreparable damage should the orders sought be declined.

## **C. THE 1<sup>ST</sup> – 33<sup>RD</sup> DEFENDANTS' RESPONSE**

4. The 1<sup>st</sup> – 33<sup>rd</sup> Defendants filed a replying affidavit sworn by Ambrose Njiru Nthiga on 10<sup>th</sup> March 2020. He swore it as a representative of Mbandi clan and on behalf of the 1<sup>st</sup> – 33<sup>rd</sup> Defendants. He disputed the Plaintiff's factual allegations and contended that the Respondents were lawfully and properly registered as proprietors of the suit properties upon conclusion of the land adjudication process for the original parcel known as Mbeere/Kirima/2244 (*parcel 2244*) which was being claimed by 17 clans of the Mbeere tribe.

5. It was contended that when Mbandi clan lodged Minister's Land Appeal Case No. 141 of 1996 they were awarded 261 acres out of parcel 2244 and that upon implementation of the award the 1<sup>st</sup> – 33<sup>rd</sup> Defendants were registered as proprietors of the various suit properties they were holding. It was also contended that the Plaintiff's Rweru clan also filed *Minister's Land Appeal Case No. 148 of 1996* whereby they were awarded their own land measuring 143 acres.

## **D. RESPONSE BY THE ATTORNEY GENERAL FOR THE 35<sup>TH</sup> – 39<sup>TH</sup> DEFENDANTS**

6. There is no indication on record of the Attorney General having filed a response to the application by the time of preparation of the ruling.

## **E. DIRECTIONS ON SUBMISSIONS**

7. When the said application was listed for hearing on 9<sup>th</sup> July 2020 it was directed that the same shall be canvassed through written submissions. The Plaintiff was granted 14 days within which to file and serve his written submissions whereas the Defendants were granted 14 days upon the lapse of the Plaintiff's period to file and serve their respective submissions. The record shows that the Plaintiff filed his submissions on 18<sup>th</sup> September 2020 whereas the Defendants' submissions were not on record by the time of preparation of the ruling.

## **F. ISSUES FOR DETERMINATION**

8. The court has perused the Plaintiff's notice of motion dated 12<sup>th</sup> February 2020, the Defendants' replying affidavit in opposition thereto and the submissions on record. The court is of the opinion that the following issues arise for determination herein:

a. *Whether the Plaintiff has made out a case for the grant of an order of inhibition.*

b. *Who shall bear costs of the application.*

## **G. ANALYSIS AND DETERMINATIONS**

### **a. Whether the Plaintiff has made out a case for an order of inhibition**

9. The court has considered the material on record on this issue. It would appear that the 1<sup>st</sup> – 34<sup>th</sup> Defendants were registered as proprietors of the suit properties by virtue of the award in *Minister's Land Appeal Case No. 141 of 1993* which awarded members of their Mbandi clan 261 acres out of parcel 2244. Although members of the Plaintiff's Rweru clan were awarded 143 acres in *Minister's Appeal Case No. 143 of 1996*, it would appear that by the time the decisions in *Appeal Nos. 141 of 1996 and 161 of 1996* were implemented there was hardly sufficient land left for implementation of the award made in the Plaintiff's favour. That is what the report by the Regional Surveyor indicates.

10. It would thus appear that there was some overlap in the portions of land described in the Minister's decisions in the three (3) appeals hence the reason why the land was exhausted before one of the awards could be implemented. That would appear to be the main reason why the Plaintiff is now challenging the implementation of the awards which although rendered on the same date were implemented at different times with the consequence that the award in favour of Rweru clan was rendered nugatory.

11. On the basis of the material on record the court is satisfied that pending hearing and determination of the suit, the suit properties the subject of the dispute ought to be preserved. There is a risk of the suit properties being alienated during the pendency of the suit which eventuality may render the suit nugatory. Accordingly, the court is inclined to grant an order of inhibition to prevent any further dealings

with and to preserve the suit properties.

***b. Who shall bear the costs of the application***

12. Although costs of an action or proceeding are at the discretion of the court the general rule is that costs shall follow the event in accordance with the proviso to **section 27 of the Civil Procedure Act (Cap 21)**. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See **Hussein Janmohammed & Sons Vs Twentsche Overseas Trading Co. Ltd [1967] EA 287**. However, in view of the peculiar circumstances leading to the filing of the suit and application, the court is of the opinion that costs of the application should be in the cause.

**H. CONCLUSION AND DISPOSAL ORDER**

13. The upshot of the foregoing is that the court finds merit in the Plaintiff's notice of motion dated 12<sup>th</sup> February 2020 and the same is accordingly allowed in terms of order No. 1 thereof. Costs of the application shall be in the cause. It is so ordered.

**RULING DATED** and **SIGNED** in Chambers at **EMBU** this **29<sup>TH</sup> DAY** of **OCTOBER 2020** and delivered via Microsoft Teams platform in the presence of Ms. Rose Njeru for the Plaintiff, Mr. Okwaro for the 34<sup>th</sup> Defendant, Mrs. Njoroge for the Attorney General for the 35<sup>th</sup> - 39<sup>th</sup> Defendants and in the absence of J. Ndara & Co. for the 1<sup>st</sup> – 33<sup>rd</sup> Defendants.

**Y.M. ANGIMA**

**JUDGE**

**29.10.2020**