



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC CASE NUMBER 342 OF 2013**

**ABERDARE INVESTMENTS LIMITED.....PLAINTIFF**

**=VERSUS=**

**PAUL NYANJUI KAMOCHU.....1<sup>ST</sup> DEFENDANT**

**DAVID WAKIUMU KARANJA.....2<sup>ND</sup> DEFENDANT**

**JULIUS KIMANI THUO.....3<sup>RD</sup> DEFENDANT**

**SAMUEL NJOROGE GUCHU.....4<sup>TH</sup> DEFENDANT**

**PETER NJUGUNA MUTURO.....5<sup>TH</sup> DEFENDANT**

**CHARLE SMUGWE MBURE.....6<sup>TH</sup> DEFENDANT**

**SIMON NDUNGU MWAURA.....7<sup>TH</sup> DEFENDANT**

**DANIEL KARANJA MURIGI.....8<sup>TH</sup> DEFENDANT**

**CHARLES MUCHOKI NDUNGU.....9<sup>TH</sup> DEFENDANT**

**SAMUEL THUKU GITAU.....10<sup>TH</sup> DEFENDANT**

**KAGOMBE MUHANGU.....11<sup>TH</sup> DEFENDANT**

**JOSEPH NGANGA KARANJA.....12<sup>TH</sup> DEFENDANT**

**PETER MBURU.....13<sup>TH</sup> DEFENDANT**

**RICHARD MWANGI MWAI.....14<sup>TH</sup> DEFENDANT**

**CHRISTOPHER KIMANI ISSAK.....15<sup>TH</sup> DEFENDANT**

**RAPHAEL GICHUHI WANJOHI.....16<sup>TH</sup> DEFENDANT**

**FRANCIS MBAU MBURU.....17<sup>TH</sup> DEFENDANT**

**RUFUS MUCHIRI KAMAU.....18<sup>TH</sup> DEFENDANT**

**ALEXANDER KINYANJUI.....19<sup>TH</sup> DEFENDANT**

CASER MAINA MUTURI.....	20 <sup>TH</sup> DEFENDANT
PETER KUNGU NJURU.....	21 <sup>ST</sup> DEFENDANT
DAVID CHEGE MBIU.....	22 <sup>ND</sup> DEFENDANT
NELSON KAMAU MWANGI.....	23 <sup>RD</sup> DEFENDANT
EZEKIEL MUTAVI MULANDI.....	24 <sup>TH</sup> DEFENDANT
JOHN NJOROGE MUTURI.....	25 <sup>TH</sup> DEFENDANT
PETTER WAWERU NJUGUNA.....	26 <sup>TH</sup> DEFENDANT
FRANCIS MUNGAI KANGETHE.....	27 <sup>TH</sup> DEFENDANT
JOSPHAT KAMAU MBUGUA.....	28 <sup>TH</sup> DEFENDANT
LUCY WAITHERA MINJA.....	29 <sup>TH</sup> DEFENDANT
BETH WAMBUI KANJA.....	30 <sup>TH</sup> DEFENDANT
BEATRICE WAMBUI MWANGI.....	31 <sup>ST</sup> DEFENDANT
PRISCA NJERI MBURU.....	32 <sup>ND</sup> DEFENDANT
PAULINE MUTHONI WAINAINA.....	33 <sup>RD</sup> DEFENDANT
MAGARET WANGUI KIMANI.....	34 <sup>TH</sup> DEFENDANT
MUMA SELF-HELP GROUP.....	35 <sup>TH</sup> DEFENDANT

### RULING

1. The Defendants/Applicants filed a Notice of Motion dated 14<sup>th</sup> January 2020 in which they seek the following orders: -

**1) Spent**

**2) That pending the hearing and determination of this application the Defendant herein be and is hereby restrained from fencing off, developing and/or in any other way dealing with the suit property until the determination of this suit or until further express orders of this Honourable court permitting such dealing.**

**3) That in the first instance and until the hearing of this application inter-partes, a temporary injunction do issue in terms of prayer 2 hereinabove.**

**4) That costs be in the cause.**

2. The Plaintiff/Respondent had filed an application seeking that the court orders the Applicants to provide security for costs in respect of a counter-claim they had filed. The Respondent's application was allowed and the Applicants were ordered to deposit a combined security for costs in the sum of Kshs.10,000,000/= within 90 days failing which the Respondent would be at liberty to apply for dismissal of the counter-claim.

3. When the Applicants failed to deposit security for costs as ordered, the Respondent applied for dismissal of the counter-claim. In a ruling delivered on 28<sup>th</sup> March 2019, the Applicants' counter claim was dismissed with costs. The Applicants now contend that the Respondent has moved to the suit accompanied by police and has started erecting a fence around it and has commenced deep excavation on the same.

4. The Applicants further contend that their Advocate wrote to the officer commanding Police Station, Thika asking him to desist from assisting the Respondent to commit an injustice. Despite these protests, the Respondent has continued to erect the said fence. It is on this basis that the Applicants are seeking the orders in this notice of motion.

5. The Respondent opposed the Applicants' application based on a replying affidavit sworn on 6<sup>th</sup> March 2020. The Respondent contends that the Applicants have no right of audience before this Court, their counter-claim having been dismissed. The Respondent states that the Applicants have already preferred an appeal to the Court of Appeal against the ruling dismissing their counter-claim and that they cannot

therefore litigate before this court and in the Court of Appeal at the same time.

6. The Respondent further contends that the Applicants were evicted way back in 2014 and it is therefore an abuse of the process of the court to file the application herein.

7. I have considered the Applicants' application as well as the opposition thereto by the Respondents. The parties had been directed to file written submissions but as at the time this ruling was reserved on 16<sup>th</sup> September 2020, it is only the Applicants who had filed submissions. I have as well considered the Applicants' submissions. The only issue for determination in this application is whether an injunction can be given to the applicant in the manner prayed for.

8. There is no contention that the Applicants' counter-claim was dismissed. The Applicants have since moved to the court of appeal and filed civil Appeal No.279 of 2018 against the ruling dismissing the counter-claim. The Applicants had also filed an application dated 1<sup>st</sup> October 2019 seeking review of the ruling dismissing their counter-claim. The Appeal was filed before the application for review. This being the case, the Applicants have no basis upon which they can bring an application for injunction.

9. As the Applicants have filed an appeal against the ruling and given the fact that they had already been evicted from the suit property, they do not have basis upon which to ask for injunctive orders. They cannot even pursue review when they have already filed an appeal to the Court of Appeal. I therefore find that the Applicants' application lacks merit. The same is dismissed with costs to the Respondent.

It is so ordered.

**Dated, Signed and Delivered at Nairobi on this 15<sup>th</sup> day of October 2020.**

**E.O.OBAGA**

**JUDGE**

In the Virtual Presence of : -

M/s Kiruthi for Defendants/Applicants

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**