



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 265 OF 2017

FORMERLY EMBU ELC. 79 OF 2014

FORMERLY KERUGOYA 294 OF 2013

NJAGI KANAMPIU.....PLAINTIFF

VERSUS

KELLEN NCHUNGUNI RIUNGU.....1ST DEFENDANT

FRANCIS KINEGENI CHABARI.....2ND DEFENDANT

ELOSY KAGENDO STEPHEN.....3RD DEFENDANT

JOSEPH KATHENYA KANAMPIU.....4TH DEFENDANT

RULING

1. This application is dated **21st February, 2019** and seeks orders:

1. That this application be certified urgent and service dispensed with in the first instance.

2. That the honourable court be pleased to issue an order of temporary injunction restraining the respondent plaintiff by himself, his agents, servants and /or employees and anybody else claiming under his title and in particular a Mr. Gitari Kanampiu from entering into, cultivating upon and/or in whatsoever manner interfering with LP Nos. MWIMBI/KIRARO/1713 and MWIMBI/KIRARO/1714 registered in the names of 1st and 2nd applicants respectively pending the hearing and determination of this application interpartes and/or until further orders of the court.

3. The honourable court be pleased to grant the 1st and 2nd defendant/applicants an order for permanent injunction restraining the respondent/plaintiff by himself, his agents, servants and/or employees from entering into, cultivating upon and/or in whatsoever manner interfering with LP NOs MWIMBI/KIRARO/1713 and MWIMBI/KIRARO/1714 registered in the names of KELLEN NCHUNGUNI and FRANCIS KINEGENI respectively until further orders of this honourable court.

4. The costs of this application be provided for.

Which application is supported by the affidavit of FRANCIS KINEGENI and KELLEN NCHUGUNI together with the grounds set herein below and those that may be adduced during the hearing hereof.

2. The application has the following grounds:

1. LP NOs Mwimbi/Kiraro/1713 and 1714 are registered in the names of 1st and 2nd applicants respectively.

2. The respondent and his brother a Mr. Gitau Kanampiu are in illegal occupation of the aforesaid two parcels of land without the two applicants permission consent and/or authority.

3. Both 1st and 2nd applicants are bonafide purchasers for considerable value of the suit land from which they were wrongly and illegally chased away by the respondent and his cronies and/or brother Mr. Gitari Kanampiu.

4. That on 11.12.2018, this case was dismissed by this honourable court against the respondent who had sought the cancellation of applicants title certificate chasing applicants from the suit land (sic).

5. The respondent and his brother a Mr Gitari Kanampiu have been cultivating upon the suit land wrongly, illegally and without applicants authority or consent employing poor farming methods to the detriment of the suit land and the applicant.

6. That the applicants have never benefited from the suit land at the expense of the respondent.

7. The two applicants have suffered irreparable damages and incurred substantial losses due to respondent's illegal acts of trespassing want on waste on the suit land (sic).

8. That unless the orders sought are granted urgently, the applicants are in real danger of suffering injustice in the hands of the respondents and suffering irreparable damages.

9. The urgency of this application is real because this is a planting season and the respondents are continuing to reap benefits from the suit land illegally and without the applicants permission, consent and/or authority.

3. The application is **supported** by the **affidavit of Francis Kinogeni Chabari, the 2nd defendant which states:**

1. That I am the 2nd defendant/applicant herein well versed with the facts of this case hence competent to swear this affidavit.

2. That I have the consent and authority of 3rd and 4th defendants to swear this affidavit on their behalf and on my own behalf.

3. That I am the sole registered owner and/or proprietor of L.P NO. Mwimbi/Kiraro/1714 (annexed here with and marked FK1 is a copy of title certificate).

4. That immediately I purchased the aforesaid parcel of land from the 3rd defendant on 16.9.2010, the plaintiff trespassed upon the suit land and sued me in the instant case seeking cancellation of my title certificate (annexed here with and marked FKII is a copy of land sale agreement).

5. That the instant case went for full hearing and on 11.12.2018 the same was dismissed with costs in my favour against the plaintiff and consequently a decree issued (annexed herewith and marked FKIII is a copy of the decree).

6. That despite the judgment having been pronounced on 11.12.1018 and decree served upon the plaintiff, the plaintiff has wrongly, illegally and without my authority or consent continued to cultivate upon the suit land No. Mwimbi/Kiraro/1714 felling down indigenous trees growing thereon and employing poor farming methods resulting to soil erosion whose effect is to cause me irreparable damages.

7. That the damage the plaintiff is causing on the suit land is irreparable and I stand to suffer irreparable damages if he is not restrained from interfering with it forthwith and urgently.

8. That his case having been dismissed by this honourable court, the plaintiff has no business continuing to cultivate on the suit land and it is the high time my interest on it are (sic) protected by way of conservatory orders of injunction.

9. That in the circumstances it is only fair just and reasonable to evict him from the suit land No. Mwimbi/Kiraro/1714 forthwith and restrain him from setting his feet on it now and in future.

10. That I therefore swear this affidavit in support of my application seeking orders of eviction and permanent injunction against the plaintiff from entering into, cultivate (sic) upon and/or in any other manner from interfering with my L.P. No. Mwimbi/Kiraro/1714 forthwith.

11. That all the facts deposed to herein above are true to the best of my knowledge, belief and information.

4. There is evidence that all concerned parties were served. The parties to whom the application is directed did not come to court.

5. As there is already a judgment of this court, and there is no evidence that it has been appealed against, the plaintiff and his brother have no legal basis for interfering with the suit property.

6. In the circumstances, orders are issued as follows:

1. Prayer 3 in the application is allowed.

2. The OCS, Chogoria Police Station is directed to implement order (1) above.

3. Costs of this application, to be paid by the plaintiff, are awarded to the applicants.

7. It is so ordered.

Delivered in open Court at Chuka this 25th day of March, 2019

in the presence of:

CA: Ndegwa

Kellen Nchunguri Riungu – 1st applicant

Francis Kenegeni – 2nd applicant.

P.M. NJOROGI

JUDGE