



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 26 OF 2015**

**ZABLON KIMINDU MUTONYI.....PLAINTIFF**

**VERSUS**

**JOSEPH MUCHIRI KIBURI.....1<sup>ST</sup> DEFENDANT**

**JEREMIAH MUCIRI MALIAH.....2<sup>ND</sup> DEFENDANT**

**AND**

**NJOKA NGETHI.....INTENDED 1<sup>ST</sup> INTERESTED PARTY/RESPONDENT**

**STEPHEN MBOGO MUTHONI.....INTENDED 2<sup>ND</sup> INTERESTED PARTY/RESPONDENT**

**RULING**

[1] This application is brought under ***Order 3A CPA and Order I Rule 1, 5 and 6 and Order 51 Rule 1 of the Civil Procedure Rules.***

The applicant prays for a temporary injunction restraining the alleged interested parties herein by themselves, their agents, invitees, workmen and /or servants from alienating, selling and/or charging land parcels No. Kabare/Kiritine/2621 and 2622 or otherwise maintaining status quo. He also prays that the interested parties be made parties to this suit and that leave be granted to amend the plaint filed herein.

[2] The respondents filed grounds of objection and stated that the issue raised herein is res-judicata in that there was a similar application dated 21<sup>st</sup> January 2016 that was heard and determined by the Court on 11<sup>th</sup> November 2016 whereby this suit was stayed and all its proceedings. Finally, it is argued that this application is an abuse of the process of the Court. The respondents pray for its dismissal with costs.

[3] I have perused the Court's ruling dated 11<sup>th</sup> November 2016 and I have noted that the parties were the same. The defendants had sought to strike the plaintiff's suit herein with costs. The prayers sought in the defendants' application were the same. The application sought for a temporary injunction to be issued restraining the defendants by themselves, their agents, invitees, workmen and/or servants from alienating, selling and/or interfering with land parcels No. Kabare/Kiritine/2621 and 2622 pending the hearing of that application.

The Court noted that the parties were litigating in Kerugoya Chief Magistrate's Court Civil Case No. 300 of 2013. The Judge ruled that the parties were caught up with ***Section 6 of the Civil Procedure Act*** and that the same lands Kabare/Kiritine/2621 and 2622 were only registered in the names of Njoka Ngethi and Stephen Mbogo Muthoni who are not parties to this suit.

The Court stayed the suit and advised the parties to pursue their respective claims in Kerugoya Chief Magistrate's Court Civil Case No. 300 of 2013.

These orders are still in force and have not been set aside and/or appealed from. The issues being raised herein by the applicant have been exhaustively determined by this Court. They have not been stayed and/or set aside.

The Notice of Motion dated 6<sup>th</sup> March 2018 is dismissed since it raises issues that have already been dealt with by this Court. The costs shall be to the respondents.

**DATED and SIGNED at Kerugoya in open Court this 22<sup>nd</sup> day of March, 2019.**

**E.C. CHERONO**

**ELC JUDGE**

**22<sup>ND</sup> MARCH, 2019**

In the presence of:

1. Mr. Kagio for Respondent – present
2. Mr. Mwai holding brief for Mr. Omenya for Applicant