



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERUGOYA**

**ELC CASE NO.183 OF 2016**

**PETER WAWERU NJIRU.....1<sup>ST</sup> PLAINTIFF**

**DAVID MUGO NJIRU.....2<sup>ND</sup> PLAINTIFF**

**STEPHEN MUCHIRI NJIRU.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**EVANS NJIRU NGANGL.....DEFENDANT**

**RULING**

What is before me is the Chamber summons dated 7<sup>th</sup> February, 2019 brought under **Order 51 CPR** and all enabling provisions of the law. The application is supported by the affidavit of the Defendant/Applicant sworn the same date. The Defendant/Applicant is seeking an order that the Land Registry Kirinyaga County be ordered to remove any encumbrances on land parcel No. GICHUGU/SETTLEMENT SCHEME/5296.

According to the supporting affidavit and grounds shown on the face of the said application the Defendant/Applicant contends that he is the registered proprietor of the suit property and that he sub-divided the same into six (6) portions out of which he transferred three (3) resultant parcels No. GICHUGU/SETTLEMENT/SCHEME 5301, 5298 and 5299 to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs/Respondents. He attached copies of certificate of official search dated 28.12.2016 respectively. He stated that he was left with land parcel No. GICHUGU/SETTLEMENT/SCHEME/5296 for his upkeep and other kids. The Applicant further stated that in the month of November 2016 the Plaintiffs/Respondents filed the instant suit claiming for their inheritance out of land parcel No GICHUGU/SETTLEMENT/SCHEME/5296 which was dismissed with costs on 25/7/2018. The Applicant further contends that pursuant to filing of the said suit, the Plaintiffs/Respondents moved to the Land offices in Kerugoya where they put encumbrance on his title on the strength of the said suit. He stated that there is nothing pending in this suit except taxation of his costs.

In response to the said application, the Respondents/filed grounds of opposition dated 15<sup>th</sup> February, 2019. The grounds of opposition based on grounds that the application is incompetent, incurable, defective and an abuse of Court process. None of the parties cited any authority in support or in opposition thereto.

I have considered with anxious care the Chamber summons and the supporting affidavit sworn by the Defendant/Applicant.

In his supporting affidavit given on oath, the Applicant confirmed that the Plaintiffs suit was dismissed on 25<sup>th</sup> July 2018 under **Oder 12 Rule 1 CPR**. There being no counterclaim by the Defendant/Applicant, the Applicant's application has no substratum on which to stand. No application has been made either by the Applicant or the Respondents to revive the dismissed suit. Without reviving the suit, there is no foundation under which the application is supported. I agree with the Respondent's grounds of opposition that the application dated 7<sup>th</sup> February 2019 is incompetent and an abuse of the Court process. The same is hereby dismissed with costs.

***READ and SIGNED in open Court at Kerugoya this 10<sup>th</sup> day of June, 2019.***

**E.C. CHERONO**

**ELC JUDGE**

**10<sup>TH</sup> JUNE, 2019**

*In the presence of:*

1. Ms Muthoni holding brief for Kinyua Kiama for Defendant/Applicant
2. A.N. Chomba/Plaintiff – absent