



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT EMBU**  
**ELC CASE NO. 71A OF 2014**  
**IN THE MATTER OF THE REGISTERED LAND ACT**  
**AND**  
**IN THE MATTER OF PARCELS OF LAND**

**MBEERE/MBITA/2087, 2088, 2089, 2090, 2094, 2119, 2169, 2171, 2184, 2185, 2200, 2204, 2205, 2298, 2382, 2548, 2571, 3771, 3772, 3773, 3774, 3775, 3776, 3777, 3778, 3779, 3780, 3781, AND 3782**

FAUSTINO NJERU NJOKA.....1<sup>ST</sup> APPLICANT

FRANCIS NJERU NYAGA.....2<sup>ND</sup> APPLICANT

**VERSUS**

RUGANO NTHIGA.....1<sup>ST</sup> INTERESTED PARTY

STEPHEN IGOGO MATHERI.....2<sup>ND</sup> INTERESTED PARTY

SOSPETER KITHUMBU MURAGURI.....3<sup>RD</sup> INTERESTED PARTY/APPLICANT

KIMUNYE TEA FACTORY COMPANY LTD.....4<sup>TH</sup> INTERESTED PARTY/RESPONDENT

DAVID WAWERU NJOROGE.....INTENDED 5<sup>TH</sup> INTERESTED PARTY

**RULING**

This is in respect to the application dated 21st August 2015 in which the 3rd Interested party **SOSPETER KITHUMBU MURAGURI** seeks the following orders:-

1. Spent.
2. Spent.
3. That the Honourable Court be pleased to join the 5th intended interested party in this suit.
4. Spent.
5. That a permanent injunction be issued against the 4th interested party by itself, agents or

***workmen from taking possession, dealing with, trespassing, selling, transferring, charging to financial institutions or in any way from dealing or alienating in particular parcel No. MBEERE/MBITA/2092 and the other suit lands until this suit is determined.***

The application is based on the grounds set out therein and supported by the affidavit of **SOSPETER KITHUMBU MURAGURI**. The gravamen of that application as I understand it, is that after the Court issued orders for the status quo to be maintained on the land parcels subject of this suit, the proposed 5th Interested party breached those orders and transferred the suit land to the 4th Interested party. It is the Applicants case that failure to enjoin the 5th Intended interested party herein will be prejudicial as it will defeat the whole claim. The Applicant further seeks orders of injunction against the 4th Interested party because on 12th August 2013, this Court ordered that the status quo be maintained.

The Intended 5th interested party filed grounds of opposition dated 14th September 2015 in which he stated that he is not the registered proprietor of any of the parcels of land pleaded in the plaint or in the application dated 21st August 2015. That the land parcel No. MBEERE/MBITA/2092 is not among those appearing in the plaint and therefore there is no nexus between him and the parcels of land subject of this suit and therefore the Applicant has no locus to institute any suit against him.

The 4th Interested party filed a replying affidavit through **OBED OUTE ONDUSO** its Manager and deponed, inter alia, that this application does not meet the requirements of an injunction and is only meant to waste this Court's time. That land parcel No. MBEERE/MBITA/2092 is not and has never been the subject of these proceedings. That the 4th Interested party contracted with the Intended 5th interested party over land parcel No. MBEERE/MBITA/2092 after the same had been offered for sale and after due diligence was carried out. That the 4th Interested party is now the bona fide registered proprietor of the land parcel No. MBEERE/MBITA and is in possession of the title thereto and is also in occupation of the land and it is therefore absurd that other parties should now be seen to be asserting some non-existent rights to land parcel No. MBEERE/MBITA/2092 and the Applicant has no locus to institute this application and has not met the threshold for the grant of any injunctive relief. The application should therefore be dismissed with costs to the 4th Interested party.

In a further affidavit, the Applicant deponed that the Intended 5th interested party should be enjoined to explain how he got registered on the land parcel No. MBEERE/MBITA/2092.

Submissions have been filed both by **NJERU NGARI** advocates for the Applicant and **J.M. KIBICHO** advocate for the 4th Interested party.

I have considered the application, the grounds of opposition by the Intended 5th interested party and the replying affidavit of the 4th Interested party.

The application seeks two substantive orders:

- 1. To enjoin the Intended 5th interested party one DAVID WAWERU NJOROGE in these proceedings.***
- 2. Injunctive orders with respect to land parcel No. MBEERE/MBITA/2092.***

An interested party should be one who has a stake in the proceedings. From the pleadings herein, I do not see what interest the Intended 5th interested party would have in the subject matter of this dispute. The land parcel No. MBEERE/MBITA/2092 which the Intended 5th interested party is alleged to have transferred to the 4th Interested party is not a subject of this suit. The land parcels subject of this suit are clearly indicated in the Originating Summons filed herein on 20th March 2007 and land parcel No. MBEERE/MBITA/2092 is not among them. I do not therefore see how enjoining the Intended 5th interested party would be of any use in these proceedings.

This Court is also being asked to issue a mandatory injunction restraining the 4th Interested party by itself, its servants, agents or workmen from taking possession, dealing, trespassing, selling, transferring,

charging to financial institutions or in any way alienating land parcel No. MBEERE/MBITA/2092 and other suit lands until this suit is determined. As I have already indicated above, land parcel No. MBEERE/MBITA/2092 is not a subject of these proceedings and therefore no orders, temporary or otherwise can be issued with respect to that parcel of land. Secondly, and most importantly, the grant of a mandatory injunction at an interlocutory stage such as is the case herein, can only be done in clear cases. This is because such an injunction amounts to determining the issues in dispute in a summary manner. Therefore, although a Court has the jurisdiction to grant a mandatory injunction at an interlocutory stage, this should be approached with utmost circumspection. In **LOCABIL INTERNATIONAL FINANCE LTD VS AGROEXPORT 1986 1 ALL ER 901**, the Court held that such an application “*should be approached with caution and the relief granted only in a clear case*”. That has been followed in many cases including in **KENYA BREWERIES LTD & ANOTHER VS WASHINGTON OKEYO 2002 1 E.A 109** where the Court stated that there must be special circumstances over and above the establishment of a prima facie case for a mandatory injunction to issue and even then, only in clear cases where the Court is satisfied that the matter ought to be determined at once. In the circumstances of this case, I am not persuaded that the Applicant would even be entitled to a temporary injunction leave alone a mandatory one. That prayer must therefore also be rejected.

Ultimately therefore, the 3rd Interested party’s Notice of Motion dated 21st August 2015 is dismissed with costs to the 4th Interested party and the Intended 5th interested party.

It is so ordered.

**B.N. OLAO**

**JUDGE**

**31<sup>ST</sup> MAY, 2017**

Ruling dated, delivered and signed in open Court this 31<sup>st</sup> day of May 2017

1<sup>st</sup> Applicant present in person

5<sup>th</sup> Intended interested party present

No appearance by the other parties/counsel though notified in writing.

**B.N. OLAO**

**JUDGE**

**31<sup>ST</sup> MAY, 2017**