



**REPUBLIC OF KENYA**

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

**E&L CASE NO. 38 OF 2017**

**HUSSEIN MOHAMED BOYA.....PLAINTIFF**

**VERSUS**

**BENSON MUGAMBI.....1ST DEFENDANT**

**JAMES KAMAU KAMINJA .....2ND DEFENDANT**

**PAULINE NTINYARI KAMAU.....3RD DEFENDANT**

**R U L I N G**

1. The Notice of Motion dated 8th day of February, 2017 seeks the following orders:-

(1) spent

(2) That this Honourable Court be pleased to issue temporary orders of injunction restraining the defendants whether by themselves their agents or any other person working under their instructions from demolishing all the Plaintiff 's premises situated at KIWANJANI being plot Numbers K/115 within Isiolo County or further uprooting barbed wire fence therein, and/or in any other way interfering with Plaintiff's proprietary rights over number K/115 situated at KIWANJANI within Isiolo County pending hearing and determination of this application interpartes.

(3) That this Honourable Court be pleased to issue temporary orders of injunction restraining the defendants whether by themselves their agents or any other person working under their instruction from demolishing all that plaintiff's premises situated at situated at KIWANJANI being plot Numbers K/115 Isiolo County or further uprooting barbed wire fence thereon, and/or in any other way inferring with the Plaintiff's proprietary rights over plot number. K/115 situated at KIWANJANI within Isiolo County pending hearing and determination of this suit.

(4) Costs of this application be provided for.

2. The Application is based on the grounds:-

(a) The Plaintiff is the registered owner of plot number K/115 situated at KIWANJANI and within Isiolo County.

(b) On/or about 2/12/2016 the defendants while in company of hired goons entered into the Plaintiff's plot and by use of force and violence demolished the Plaintiff's building standing thereon and fenced the plot with barbed wire.

(c) The defendants actions are illegal, Unconstitutional and Wrongful and the same should not be allowed to stand.

3. The Applicant has also filed a Supporting Affidavit where he has deposed as follows:-

1. THAT he is the registered owner of plot K/115 situated at KIWANJANI within Isiolo County (Annexed is a copy of rent payments receipts marked HMB 2)
2. THAT on or about 21/10/2011 he bought plot No. K/115 Isiolo County at a consideration of Kshs. 130,000/= (Annexed is a copy of sale agreement marked HMB 2)
3. THAT consequently after payment of consideration amount the two plots were transferred into his names (annexed are copies of application for transfer of plot No. K/115 marked HMB3).
4. THAT since the year 2011 to date he has been living and extensively developed the suit land by erecting barbed wire fence, and has constructed a semi permanent house thereon (annexed is a copy of application for part development plan marked HMB4).
5. THAT transfer of the said plot into his names was effected vide MIN. NO. 12 WTP&M/MAY/2012 (annexed is a copy of a letter from the then County Council of Isiolo confirming the same and marked HMB5).
6. THAT on/or about 2/12/2016 the defendants while in company of hired goons entered into his plot and by use of force and violence uprooted barbed wire fence and demolished his building standing thereon.
7. THAT he has developed the plot in accordance with by laws Isiolo County Government.
8. THAT after the actions of the defendant, he reported the matter to the relevant County Government offices whereby the defendants were summoned (annexed is a letter from the office of the Chief Officer Lands, physical Planning & Environment marked HMB6).
9. THAT instead of the defendants honouring the said summons, they proceeded to an advocate's firm whereby the Counsel responded to the said summons alleging that the dispute over ownership of the said plot is pending for determination before Environment and Land Court at Meru which particulars applicant is not aware of (annexed is a copy of the said letter marked HMB7).
10. THAT the defendant's actions are illegal. Unconstitutional and Wrongful and the same should not be allowed to stand.
11. THAT unless the orders sought are granted applicant stands to suffer irreparable loss and damages.

4. Vide a Return of Service filed on 31:03:17 the Court confirms that Respondents/Defendants were served. The said Respondents were however absent and they have so far not filed any Response to the present application.

5. The application stands as unopposed. The annexures to the application confirm that applicant is the one paying rates for the suit land. He (Applicant) has therefore established a Prima Facie case against defendants. **The Application of 10:02:17 is allowed, However the injunctive orders will remain in force for a period of 12 months only.**

**DELIVERED IN OPEN COURT AT MERU THIS 3RD DAY OF MAY, 2017 IN THE PRESENCE OF:-**

C:A Janet

In the presence of Omari h/b for Kiogora for Plaintiff

**HON. L.N. MBUGUA**

**JUDGE**