



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MACHAKOS**  
**ELC. CASE NO.128 OF 2016**

NTURE NZOKA.....1<sup>ST</sup> PLAINTIFF  
MUTISYA MWINZI.....2<sup>ND</sup> PLAINTIFF  
MWANGANGI KINTHU.....3<sup>RD</sup> PLAINTIFF  
TITUS NYAMU.....4<sup>TH</sup> PLAINTIFF  
MWANDIKWA BARA.....5<sup>TH</sup> PLAINTIFF  
JOSEPH NKUNYU.....6<sup>TH</sup> PLAINTIFF

**VERSUS**

IGUNA KIRII.....1<sup>ST</sup> DEFENDANT  
KYALO IGUNA.....2<sup>ND</sup> DEFENDANT  
JOHN MULWA MUTHAA.....3<sup>RD</sup> DEFENDANT

**RULING**

1. In the Notice of Motion dated 26<sup>th</sup> September, 2016, the Plaintiffs are seeking for these orders:

*a. That an injunction barring and restraining the Respondents, their agents, servants or employees from trespassing into, entering, putting up building, undertaking any works or in any other way whatsoever and howsoever interfering with the Applicants unsurveyed land pending the hearing and determination of the lower court suit.*

*b. That the costs of this Application be provided for by the Respondents.*

2. The grounds on which the Application is premised on are that the Applicants are the owners of the suit land; that the Respondents have trespassed on the suit land and that the Respondents have been cutting down trees and putting up buildings on the suit land.

3. According to the Affidavit of the 6<sup>th</sup> Plaintiff, the 1<sup>st</sup> Respondent sued him in Kyuso Law Court SRMCC No. 32 of 2015 claiming that he is the owner of the suit land.

4. The Plaintiffs deponed that on 14<sup>th</sup> March, 2015, their clan discussed the dispute and that the clan resolved that the suit land belongs to the 2<sup>nd</sup> Plaintiff's grandfather.
5. In response, the 1<sup>st</sup> Defendant deponed that there is an existing suit between the parties herein in the lower court; that he is the legal owner of the suit land; that it is the Plaintiffs who trespassed on the suit land on 19<sup>th</sup> August, 2015 and that it is because of the said acts of trespass that he filed the matter that is pending in the lower court.
6. The 1<sup>st</sup> Defendant deponed that in Kyuso SRMCC No. 32 of 2015, they filed an Application seeking for restraining orders which Application is still pending.
7. The parties filed brief submissions which I have considered.
8. It is not in dispute that the Plaintiffs herein were sued by the 1<sup>st</sup> Defendant in Kyuso SRMCC No. 32 of 2015.
9. The pleadings that have been annexed on the Defendants' Affidavit shows that the suit property is the same in the two matters.
10. The Defendants have also annexed the Application that they filed in the lower court seeking for injunctive orders as against the Plaintiffs herein.
11. Indeed, the lower court granted to the Defendants herein injunctive orders restraining the Plaintiffs from interfering with the suit land.
12. The Plaintiffs, having been restrained from trespassing, fencing, sub-dividing and clearing bushes on the suit land want this court to issue orders which will in effect conflict with the orders of the lower court. That is unacceptable.
13. Considering that there is already a pending suit in the lower court involving the same suit property and parties, I find and hold that the filing of this suit by the Plaintiffs (*who are Defendants in Kyuso SRMCC No. 32 of 2015*) is an abuse of the court process.
14. In the circumstances, I dismiss the Plaintiffs' Application dated 26<sup>th</sup> September, 2016 with costs.
15. I also strike out the suit with costs for being sub-judice Kyuso SRMCC No. 32 of 2015.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30<sup>TH</sup> DAY OF JUNE, 2017.**

**O.A. ANGOTE**

**JUDGE**