



**REPUBLIC OF KENYA**

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

**HCC No. 23 OF 2011**

**KENYA AGRICULTURAL RESEARCH INSTITUTE.....PLAINTIFF**

**VERSUS**

**FARAH ALI & ANOTHER.....DEFENDANT**

**RULING**

1. This ruling is in respect of two applications: plaintiff's Notice of Motion dated 14<sup>th</sup> June 2017 and filed on 15<sup>th</sup> June 2017 and first defendant's Notice of Motion dated 22<sup>nd</sup> June 2017 and filed on 23<sup>rd</sup> June 2017

2. On 15<sup>th</sup> June 2017, counsel for the plaintiff appeared before the court ex parte under certificate of urgency and obtained orders:

a) *THAT this matter be and is hereby certified urgent.*

b) *THAT pending the hearing and determination of this application inter partes, the honourable court be and is hereby pleased to issue a temporary injunction restraining the 1<sup>st</sup> defendant herein whether by himself, his agents and/or servants or other members of Isahakia Self Help Group from invading, trespassing, fencing, introducing livestock, grazing, cultivating or in any way whatsoever interfering with the plaintiff's quiet possession and use of L.R Numbers 5210 and 5211 other than the portion they were previously occupying.*

c) *THAT the officer commanding Naivasha Police Division be and is hereby directed to ensure compliance with the Orders of this honourable court.*

d) *THAT inter partes hearing on 21<sup>st</sup> September 2017.*

3. The above orders were obtained at the ex parte stage on the strength of Notice of Motion dated 14<sup>th</sup> June 2017 which seeks the following orders:

a) *THAT this matter be certified urgent and service of the same be dispensed with in the first instance.*

b) *THAT pending the hearing and determination of this application inter partes, the honourable court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> defendant herein whether by himself, his agents and/or servants or other members of Isahakia Self Help Group from invading, trespassing, fencing, introducing livestock, grazing, cultivating or in any way whatsoever interfering with the plaintiff's quiet possession and use of L.R Numbers 5210 and 5211 other than*

*the portion they were previously occupying.*

*c) THAT the Officer Commanding Naivasha Police Division be directed to ensure compliance with the orders of this honourable court.*

*d) THAT pending the hearing and determination of this suit, the honourable court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> defendant hereinwhether by himself, his agents and/or servants or other members of Isahakia Self Help Group from invading, trespassing, fencing, introducing livestock, grazing, cultivating or in any way whatsoever interfering with the plaintiff's quiet possession and use of L.R Numbers 5210 and 5211 other than the portion they were previously occupying.*

*e) THAT costs of this application be in the cause.*

4. In view of the busy state of the court's diary, and considering that the main suit had a hearing date of 21<sup>st</sup> September 2017, I ordered that inter partes hearing of Notice of Motion dated 14<sup>th</sup> June 2017 be on 21<sup>st</sup> September 2017.

5. Being aggrieved by the orders of 15<sup>th</sup> June 2017, the 1<sup>st</sup> defendant filed Notice of Motion dated 22<sup>nd</sup> June 2017 seeking setting aside of the said orders on grounds of material non-disclosure, the existence of earlier orders of this court suspending all interlocutory applications among other grounds.

6. When Notice of Motion dated 22<sup>nd</sup> June 2017 came up, it was agreed that the said application be treated as a response to Notice of Motion dated 14<sup>th</sup> June 2017 and that both applications be disposed of by way of written submissions.

7. Notice of Motion dated 14<sup>th</sup> June 2017 is supported by the affidavit of Mr. T. P. Lanya Suma, a director of the plaintiff. He deposes that as at the time of swearing the affidavit, the 1<sup>st</sup> defendant and members of Isahakia Self Help Group were in the process of moving about 300 heads of livestock from North Eastern region with a view to stocking them on the suit property and that if that was allowed, the plaintiff's activities including research activities would be compromised. The plaintiff thus sought the prayers listed on the face of Notice of Motion dated 14<sup>th</sup> June 2017.

8. The 1<sup>st</sup> defendant has opposed the application through the affidavit of Mr. Farah Ali sworn on 22<sup>nd</sup> June 2017. He deposes among others that this court ordered that all interlocutory applications be suspended pending hearing and determination of the suit. Further that the plaintiff's attempt to get an injunction from the court of appeal was dismissed on 14<sup>th</sup> April 2016 by the said court.

9. The 1<sup>st</sup> defendant filed submissions dated 19<sup>th</sup> July 2017 and the plaintiff filed submissions dated 21<sup>st</sup> July 2017. I have considered the applications, the affidavits filed, submissions as well as the authorities cited.

10. A perusal of the record herein reveals that on 16<sup>th</sup> March 2015 Munyao J. ordered as follows:

**I have perused the two files petition No.7/2011 and Civil Suit No. 23 of 2011. These are cases which to me have been pending in court for too long with a myriad of applications. As we speak, there are at least two more applications pending yet the suits are still awaiting hearing. In my discretion, and so that the issues in the two suits can be determined once and for all, I suspend the hearings of the applications on record. Instead, I direct the parties to make ready the suits for final hearing and disposal.**

**The date of 21/5/2015 is hereby converted to be a date for directions on how the two suits will proceed for hearing. Within 30 days from today, all parties to have filed and exchanged their pre-trial documents and on 21/5/2015 parties to ensure that the 2 matters are ready for**

**hearing.**

11. Yet again on 30<sup>th</sup> June 2015 the learned judge stated as follows:

**I have perused the record and taken note of the submissions of counsels. This is a fairly complex matter and there have been numerous applications. When the matter first came into my hands on 16<sup>th</sup> March 2015, I was of the opinion that this case has been pending in court for far too long with a myriad of applications yet the substance of it is still pending. I suspended the hearing of all applications and directed the parties to instead, make the case ready for hearing.**

**I am still of the same opinion. I think any prejudice that any party stands to suffer if the applications on record are not heard is far outweighed by the need to determine the suit with finality. My directions of 16<sup>th</sup> March 2015 therefore stand. I do suspend the hearing of all applications on record. The status quo on the suit property to prevail pending hearing of the suit. Any party aggrieved by my orders has leave to appeal. The matter is now to be fixed for hearing on priority basis.**

12. Both the orders of 16<sup>th</sup> March 2015 and those of 30<sup>th</sup> June 2015 still remain on record and have not been set aside. The main suit is partly heard and is scheduled for further hearing on 21<sup>st</sup> September 2017.

13. Needless to state, I am not bound by the orders of Munyao J. and I can part from them if a case is made in that regard. I see no reason to part from them. They were issued in the interest of ensuring an early conclusion of the main suit. Under section 1A of the Civil Procedure Act, parties and their advocates are under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court. It bears repetition that the overriding objective of the Act and the rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes.

14. It is clear that Notice of Motion dated 14<sup>th</sup> June 2017 was filed in contravention of the orders of the court made on 16<sup>th</sup> March 2015 and those of 30<sup>th</sup> June 2015 which stayed all applications and directed parties to proceed with hearing of the suit. Consequently, the orders of 15<sup>th</sup> June 2017 ought not to have been issued. I hereby set them aside. Notice of Motion dated 14<sup>th</sup> June 2017 and all other applications whether pending or future are stayed. Parties are once again directed to cooperate with the court to facilitate the just, expeditious, proportionate and affordable resolution of the dispute in this matter.

Dated, signed and delivered in open court at Nakuru this 31<sup>st</sup> day of July 2017.

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Ms. Amulabu holding brief for Mr. Otieno for the plaintiff

Mr. Athuok for the defendants

Court Assistant: Gichaba