



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**ELC CASE NO. 335 OF 2016**

**LAWRENCE NGINGA MARANGA.....PLAINTIFF**

-VS-

**HEADMASTER CHAANI PRIMARY SCHOOL.....1<sup>ST</sup> RESPONDENT**  
**BOARD OF MANAGEMENT CHAANI PRIMARY SCHOOL.....2<sup>ND</sup> RESPONDENT**  
**HEADMASTER CHAANI SECONDARY SCHOOL.....3<sup>RD</sup> RESPONDENT**  
**BOARD OF MANAGEMENT CHAANI SECONDARY SCHOOL.....4<sup>TH</sup> RESPONDENT**  
**THE HONOURABLE ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 21/12/2016. It is brought under Article 159 of the Constitution, order 40 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act (Cap 21) and all other enabling provisions of the law. It seeks orders that;

1. Spent

2. Spent

3. Pending interparties hearing and determination of this application and suit a temporary injunction be issued restraining the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents, their servants, workmen, agents, employees and/or otherwise whosoever from encroaching, putting up structures, buildings and in any way modifying the public road separating plot Numbers 151 and 2412.

4. Spent

5. Costs of the application be provided for.

2. The grounds are on the face of the application. The main one being the Applicant is the owner of Plot No. 511 which can only be accessed through a public road separating Plot No. 151 and Plot No. 2412. The application is supported by the affidavit of Lawrence Nginga Maranga the Plaintiff/Applicant herein on the 21/12/2016.

3. The application is opposed. There are grounds of opposition filed by counsel for the Defendants/Respondents dated 10/4/2017.

4. I have considered the pleadings, the application, the supporting affidavit and the annexures.

I have also considered the grounds of opposition and the submissions of both counsels.

5. It is the Plaintiff's/Applicant's contention that he is the owner of Plot Number 511. That he can only access this property through a public road between Plot number 151 and 24/2. That the 1<sup>st</sup> – 4<sup>th</sup> Defendants/Respondents have erected structures thereby impeding his access to his plot.

The Respondents have denied this.

6. The issues of determination is whether the Plaintiff/Applicant's application has met the conditions to warrant the orders sought to be granted. The conditions for grant of temporary injunctions are well stated in the case of **Giella vs Cassman Brown & Co Ltd (1973) EA 358.**

I have looked at annexure No. 3 to the application. It does not say much. No other evidence has been adduced to prove that the respondents are undertaking construction of a road reserve.

The survey report filed by the Applicant is not by the county surveyor and the court cannot rely on it.

7. I find that the Plaintiff/Applicant has failed to demonstrate that he has a prima facie case with a probability of success. Secondly, the Plaintiff/Applicant has failed to show that he will suffer loss should these orders not be granted. If there is any construction on the road reserve then this is an issue which will come out during the hearing.

The balance of convenience is in favour of the Respondents. This is because these are projects funded by taxpayers' money. Time is of essence.

8. All in all I find no merit in this application and the same is dismissed.

The issue of costs to await the outcome of the main suit.

Order accordingly. Dated and signed at Mombasa this **19<sup>th</sup>** day of **July 2017.**

**L. KOMINGOI**

**JUDGE**

**19/7/2017**

Ruling dated and delivered in open court on the **19<sup>th</sup>** day of **July 2017** in the absence of parties duly informed.

**L. KOMINGOI**

**JUDGE**

**19/7/2017**