



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO 123 OF 2017**

**OLYPIA NCOGA NCEBERE.....PLAINTIFF/APPLICANT**

**VERSUS**

**ZAVERIO MITHIKA.....DEFENDANT/RESPONDENT**

**R U L I N G**

1. The Notice of Motion dated 18<sup>th</sup> April, 2017 seeks the following orders:-

1) Spent

2) That the Defendant/Respondent hi agents and or persons acting from his authority be and are hereby restrained from entering, making good use or wasting that parcel of land known as Antumburi Adjudication Section, Land P/No. 2122 pending the hearing and determination of this Application.

3) That the Defendant/Respondent his agents and or persons acting from his authority be and are hereby restrained from entering, making good use or wasting that parcel of land known as Antumburi Adjudication Section, Land P/No. 2122 pending the Hearing and determination of the suit.

4) That the Honourable Court be pleased to make such further orders in the interest of justice upon examination.

5) That costs of this application be in the cause.

2. The Application is based on the grounds:-

1) That the Plaintiff/Applicant is the legal owner of parcel of land known as Antumburi Adjudication Section, Land P/NO. 2122 and holds a valid Confirmation of Registration letter issued by the District Land Adjudication & Settlement Officer.

2) That the Defendant /Respondent has invaded and encroached on the Applicant's parcel of Land, making it impossible for the Plaintiff /Applicant to have quiet possession of her land.

3) That the Defendant /Respondent stands to suffer irreparable loss and damage to her livelihood that she depends on to feed her family if the orders sought herein are not granted.

4) That this Applicant has been brought without unreasonable delay;

5) That in view of the foregoing, it is proper and in the interests of justice that the prayers prayed herein are granted pending the hearing and determination of this Application.

3. Applicant has also filed a Supporting Affidavit where he has reiterated the contents in the grounds set out herein.

4. The application was served but no response was filed.

5. I have perused the application as well as the pleadings. The pleadings clearly indicate that Plaintiff's claim against defendant is for an eviction order. It therefore means that defendant is in occupation of the Suitland. The Applicant's prayer to have defendant restrained from entering the Suitland (in the application) is not in tandem with the pleadings. If the orders sought for are granted, it would amount to the eviction of the defendants before the trial.

6. In essence, the prayer sought herein is for a mandatory injunction. In *Kenya breweries Ltd and Another Vs Washington Okeyo (2002) 1 E.A 109*, it was held that "*there must be special circumstances shown 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 thinks that the matter ought to be decided at once*".

7. This is not a case that can be decided at once. The Court would be interested in knowing how the defendants came to be in the suit land and what are his rights and interests thereof vis a vis those of the applicant.

All in all, I find that the application is unmerited, the same is hereby dismissed with no orders as to costs.

**DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 11<sup>TH</sup> DAY OF OCTOBER, 2017 IN THE PRESENCE OF:**

CA: Janet

Nyakwana h/b for Kinyua for applicant present.

**Hon. L.N. MBUGUA**

**ELC JUDGE**