



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 23 OF 2016**

**EUNICE MUTITU GICHOBI.....1<sup>ST</sup> PLAINTIFF**

**JESINTA WANJIKU GICHOBI.....2<sup>ND</sup> PLAINTIFF**

**JULIUS KARIUKI GICHOBI.....3<sup>RD</sup> PLAINTIFF**

**LUCY MUTHONI GICHOBI.....4<sup>TH</sup> PLAINTIFF**

**CATHERINE WAMBUI GICHOBI.....5<sup>TH</sup> PLAINTIFF**

**JOHN NGURE GICHOBI.....6<sup>TH</sup> PLAINTIFF**

**STEPHEN GITARI GICHOBI.....7<sup>TH</sup> PLAINTIFF**

**VERSUS**

**JOSEPH GICHOBI NGURE.....1<sup>ST</sup> DEFENDANT**

**STEPHEN NGUMU WERU.....2<sup>ND</sup> DEFENDANT**

**RULING**

On 25<sup>th</sup> February 2016, the Court granted the plaintiffs interim orders in terms of prayers 1, 2 and 3 of the Notice of Motion dated 22<sup>nd</sup> February 2016. The application was then fixed for hearing inter-parte on 15<sup>th</sup> March 2016.

On 15<sup>th</sup> March 2016, counsel for the plaintiffs **MR. MWAI** did not attend Court and the application was adjourned to 21<sup>st</sup> April 2016 when **MR. MWAI** informed the Court that he was of the view that the parties should just prepare the main suit for hearing. The Court granted the parties upto 24<sup>th</sup> August 2016 to agree on the way forward but nothing appears to have happened on that day.

I now have an application by the 2<sup>nd</sup> defendant dated 8<sup>th</sup> June 2017 seeking the following orders:

***1. That the Honourable Court be pleased to declare the temporary injunction granted on 25<sup>th</sup> February 2016 as having lapsed by operation of the law as no steps have been taken for over twelve months.***

***2. That the Honourable Court be pleased to dismiss the suit for want of prosecution.***

**3. That costs of the application be provided for.**

The application is premised on the grounds set out therein and is also supported by the affidavit of **STEPHEN NGUMU WERU** the 2<sup>nd</sup> defendant herein.

The gravamen of the application is that since 25<sup>th</sup> February 2016 when this Court granted the plaintiffs an order of temporary injunction, no action has been taken to expedite this case and the said order of temporary injunction has infact lapsed. The 2<sup>nd</sup> defendant has deponed further that the land subject of this suit i.e. BARAGWE/GUAMA/879 was the subject of **CIVIL CASE No. 336 of 2013** involving him and the 1<sup>st</sup> defendant and he has a decree issued in his favour upon admission by the 1<sup>st</sup> defendant.

The record shows that **MR. MWAI** was served with the application and a hearing notice on 20<sup>th</sup> July 2017 showing that the application was listed for hearing on 18<sup>th</sup> September 2017.

On 18<sup>th</sup> September 2017, the Court did not sit and the 2<sup>nd</sup> defendant took another date for hearing of the application which was on 30<sup>th</sup> October 2017. However, there is no evidence that counsel for the 2<sup>nd</sup> defendant served counsel for the plaintiffs with the said application. In the circumstances, and notwithstanding the fact that no reply has been filed in response to the said application, it would be unfair to allow it in the absence of the plaintiffs who needed to be served with the same.

I therefore decline to allow the application and direct that it be served for hearing on 9<sup>th</sup> November 2017.

It is so ordered.

**B.N. OLAO**

**JUDGE**

**3<sup>RD</sup> NOVEMBER, 2017**

Ruling dated, delivered and signed in open Court this 3<sup>rd</sup> day of November 2017 at Kerugoya

2<sup>nd</sup> Defendant present

No appearances by other parties.

**B.N. OLAO**

**JUDGE**

**3<sup>RD</sup> NOVEMBER, 2017**