



**THE ENVIRONMENT & LAND COURT**

**AT GARISSA**

**MISCELLANEOUS CIVIL APPL. NO. 9 OF 2017**

**NYAGA NJERU.....PLAINTIFF (DECEASED)**

**JEREMIAH KYONGO NYAGA.....LEGAL REPRESENTATIVE APPLICANT**

**VERSUS**

**SYENGO KIRAMTU.....1<sup>ST</sup> DEFENDANT**

**SAMUEL MUSEE KIRYAMTU..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**BACKGROUND**

This ruling arises from the applicant's application dated 26<sup>th</sup> September, 2017 brought by way of a Notice of Motion under Section 17, 1A, 3A order 17 and 51 CPA and CPR respectively. The applicant is on orders of permanent injunction restraining the defendant, his servants, relatives, or any other persons from using and/or interfering with the suit land. The application is premised on grounds shown on the face of the said application supported by an affidavit sworn by the applicant the same date. That application is opposed with grounds of opposition and a replying affidavit dated 17<sup>th</sup> October, and 16<sup>th</sup> October, 2017 respectively.

**APPLICANTS CASE**

The applicant avers that he is the legal representative of his father's estate one Nyaga Njeru. He further avers that prior to his demise, his late father had a land dispute with the respondent in this case and that the case was heard and determined in his favour.

The applicant also contends that he filed and obtained a limited grant of letters of administration vide succession cause No. 31 of 2015 (Garissa). He attached a copy of the said Limited Grant ad Litem pursuant to Section 54 and the 4<sup>th</sup> schedule marked "JKN 3".

**RESPONDENTS CASE**

The application is opposed with grounds of opposition and a replying affidavit sworn by the second respondent in that replying affidavit the 2<sup>nd</sup> respondent avers that the applicant is a stranger to the suit in the lower court and that he has not sought leave to be enjoined as a party to that suit. In conclusion, the respondents maintain that the applicant's application is frivolous bad in law and an afterthought.

I have considered the application dated 26<sup>th</sup> September, 2017 together with the supporting affidavit. I

have also considered the grounds of opposition and the replying affidavit in opposition thereto. The applicant is seeking an order of a permanent injunction restraining the respondents, their agents, or relatives from interfering with the suit land. The description of the suit land is not given in the application nor the supporting affidavit. The application has been brought under a miscellaneous application. Prior to the filing of the present application, the applicant had filed an application to transfer a civil Case No. 28 of 1992 (Mwingi) from Mwingi Law Courts to this Honourable court for hearing and determination.

The reason for the said application is that the magistrate's court in Mwingi did not have jurisdiction to hear and determine Environment and Land cases. After hearing that application and the submissions by the parties, the court allowed the transfer of the said Case No. 28 of 1992 (Mwingi) from Mwingi Law Court to this Honourable court for hearing and determination.

Before the file could be forwarded to this court for hearing and determination, the applicant who is acting in person filed the present application. Though the applicant has not given the description of the land he is seeking injunctive orders restraining the respondents, from interfering with, there is an award adopted by the Mwingi Court on 22/4/98.

That award recognises the late Nyaga Njeru as the owner of the suit land. It is the same land which the applicant is seeking to restrain the respondents from interfering with. The applicant who is acting in person may have overlooked the importance of including the description of the land in question in his application. That omission in my view is not fatal to the application as the applicant was under the false impression that the original file from Mwingi magistrate's court has been forwarded to this Honourable Court.

Under Article 159 of our new Constitution the law requires this Honourable court to administer justice without undue regard to procedural technicalities and to protect and promote the spirit of the Constitution. Having said that, I am satisfied that despite the absence of the description of the suit property, the application dated 26<sup>th</sup> September, has merit and the same is allowed in the following terms.

- 1. A temporary injunctive order be and is hereby issued against the respondents, their agents, servants, relatives and or any other persons acting on their behest from interfering with the suit property described in PMCC NO. 28 of 1992 (Mwingi) pending the hearing and final determination of this case.**
- 2. The temporary injunction orders to last for 360 days only.**
- 3. The Deputy Registrar Garissa Law Courts to facilitate the transfer of the PMCC Case No. 28 of 1992 for hearing and determination.**
- 4. The costs of this application to abide the event.**

**Read and delivered in the Open Court this 18<sup>th</sup> December, 2017.**

**E. C Cheron (Mr.)**

**ELC Judge**

**In the presence of:**

1. Applicant
2. Respondent/Advocate (absent)
3. Ijabo – Court Clerk -present