



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 90 OF 2015

SAMUEL MAINA.....1ST PLAINTIFF/RESPONDENT

PETER MURAGE.....2ND PLAINTIFF/RESPONDENT

JOSEPH MWANGI MUCHANGI.....3RD PLAINTIFF/RESPONDENT

JOSEPH KINYUA MIANO Alias

JOSPAT KINYUA MIANO.....4TH PLAINTIFF/RESPONDENT

LAWRENCE MUCHIRI KAMUTU.....5TH PLAINTIFF/RESPONDENT

VERSUS

MURUGI KANYEKI NGOBU.....DEFENDANT/APPLICANT

RULING

On 11th April 2016, I granted the plaintiffs an order of temporary injunction restraining the defendant from evicting them, alienating, disposing off or in any other way dealing with the land parcels number KIINE/KIBINGOTI/NGUGUINI/167, MWERUA/MUKURE/327 and all resultant numbers after sub-division and the status quo existing as at 23rd July 2010 be maintained pending the hearing and determination of this suit. I further directed the parties to comply with **Order II of the Civil Procedure Rules**.

On 18th May 2016, the defendant appeared before **Waithaka J.** with her own application dated 15th May 2016 also seeking that a temporary injunction be issued against the plaintiffs restraining them from trespassing, occupying and/or causing wanton destruction on the crops growing on land parcel number KIINE/KIBINGOTI/NGUGUINI/3759 and KIINE/KIBINGOTI/NGUGUINI/3790 pending the hearing and determination of the application. The defendant also sought that this Court's order issued on 11th April 2016 be set aside as they were obtained by concealing information.

The application was founded on the grounds set out therein and supported by the affidavit of the defendant **MURUGI KANYEKI NGOBU**. Her case is that contrary to what the plaintiffs had told this Court about having entered into a memorandum of understanding with her that they shall purchase land parcel number KIINE/KIBINGOTI/NGUGUINI/167 and MWERUA/MUKURE/327 registered in her late husband's names, she had never entered into any such arrangement with the plaintiffs and in any event, she does not thumb-print any documents but signs in her name. That all this is a case which is confirmed by the fact that the plaintiffs failed to serve her.

When the defendant's application came up for hearing on 31st May 2016 as directed by **Waithaka J.** there was no appearance by the plaintiffs or their counsel Mr. Mwai though served on 24th May 2016 as per the affidavit of service sworn by Mr. Murigu counsel for the defendant. Most significantly, however, there was no response file by the plaintiffs to that application which is therefore un-opposed.

The defendant's application dated 15th May 2016 seeks two prayers:-

1. ***A temporary injunction be issued against the plaintiffs restraining them from trespassing, occupying and/or causing wanton destruction on the crops growing on land parcel No. KIINE/KIBINGOTI/NGUGUINI/3789 and KIINE/KIBINGOTI/NGUGUINI/3790 with the application is heard and determined. That must be an error. The order must be until this suit is heard and determined.***
2. ***That the temporary orders issued by this Court on 31st July 2015 and further allowed on 11th April 2016 be set aside as they were obtained by concealing information to this Court. One of the grounds upon which this order is sought is that having obtained the temporary order on 31st July 2015 under certificate of urgency, the plaintiffs did not serve the defendant until 30th April 2016.***

I have considered the defendant's application. It is not opposed and there was no appearance by the plaintiffs or their counsel though served. **Order 40 Rule 3 of the Civil Procedure Rules** provides as follows:-

"In any case where the Court grants an ex-parte injunction the applicant shall within three days from the date of issue of the order serve the order, the application and pleading on the party sought to be restrained, In default of service of any of the documents specified under this rule, the injunction shall automatically lapse" - emphasis added

As has been indicated above, the Court issued an order of temporary ex-parte injunction against the defendant on 11th April 2016 which, by virtue of the provision of **Order 40 Rule 3 of the Civil Procedure Rules**, ought to have been served upon the defendant "**within three days**" from that date. According to the defendant, and this is not disputed, the plaintiffs did not comply with that statutory requirement. In the circumstances, and as provided in law, the temporary injunction issued in favour of the plaintiffs on 11th April 2016 automatically lapsed three days after that date and it does not even require an order from this Court to direct as much. The ex-parte injunction relief issued on 11th April 2016 lapsed and did not have any force of law three days after the date of issue unless it and the other pleadings were served upon the defendant who, as has been stated above and it has not been disputed, was not served.

In the circumstances therefore, and upon considering the defendant's Notice of Motion dated 13th May 2016 as amended, I make the following orders:-

1. ***A temporary order of injunction is issued against the plaintiffs restraining them from trespassing, occupying and/or causing wanton destruction on the crops growing on land parcel No. KIINE/KIBINGOTI/NGUGUINI/3789 and KIINE/KIBINGOTI/NGUGUINI/3790 pending the hearing of this suit.***
2. ***For avoidance of doubt, the temporary injunction issued in favour of the plaintiffs on 11th April 2016 not having been served upon the defendant as required in law, the same is marked as having lapsed.***
3. ***Costs in the cause.***

B.N. OLAO

JUDGE

3RD JUNE, 2016

Ruling delivered, dated and signed in open Court this 3rd day of June 2016.

Mr. Murigu for Defendant - present

Mr. Mwai for Plaintiffs - absent.