



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

**CIVIL SUIT NO 24 OF 2016**

**JULIUS KIAMBI M'IKIARA.....PLAINTIFF**

**VERSUS**

**M'IKIARA GAITIRITHIA.....1ST DEFENDANT**

**LOISE KIENDE KIARA.....2ND DEFENDANT**

**JANE NTHANGA.....3RD DEFENDANT**

**EVANGELINE KIRIGO IKIARA.....4TH DEFENDANT**

**RULING**

1. This Ruling concerns issues raised in 3 applications. The first application was filed by the Plaintiff and is dated 12th April, 2016. It seeks orders:-

***(1) THAT this application be certified as very urgent and be heard as a matter of priority and ex-parte in the first instance.***

***(2) THAT this Honourable Court be pleased to issue orders of temporary injunction against the 2nd, 3rd and 4th respondents, their agents, workers, employees, family members, representatives or anyone working at their behest restraining them from interfering with the plaintiff/applicant quiet possession, occupation, utilization of a portion measuring 2 acres in land parcels L. NO. NKUENE/URUKU/1688,1689, 1690 and 1691 pending the inter-partes hearing and determination of this application.***

***(3) THAT the orders of inhibition do issue inhibiting any dealings with land parcels LR. NO. NKUENE/URUKU/1688,1689,1690 and 1691 pending the inter-parte hearing of the application.***

***(4) THAT this Honourable Court be pleased to issue orders of temporary injunction against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents, their agents workers, employees family members representatives or anyone working at their behest restraining them from interfering with the Plaintiff/applicant's quiet possession, occupation and utilization of a portion measuring 2 acres in land parcels LR. NO. NKUENE/URUKU/1688,1689,1690 and 1691 pending the hearing and determination of this suit.***

***(5) That orders of inhibition do issue inhibiting any dealings with land parcels LR. NO. NKUENE/URUKU/1688,1689,1690 and 1691 pending the hearing and determination of this***

**suit.**

**(6) THAT costs for and incidental to this application be provided for.**

2. It is supported by the affidavit of one JULIUS KIAMBI M'IKIRA and has the following grounds:-

**i THAT the plaintiff /applicant is a son to the 1st defendant/respondent and the 2nd, 3rd and 4th defendants/respondents are his biological sisters.**

**ii. THAT the 1st defendant/respondent acquired land parcel LR.NO. NKUENE/URUKU/488 from his late father GAITIRITHIA, RUBIRANGU which he has subdivided into land parcels NKUENE/URUKU/1688,1689, 1690 AND 1691.**

**iii. THAT the plaintiff/applicant has since his childhood occupied and extensively developed a portion of land measuring 2 acres in land parcel NO. NKUENE/URUKU/1688, 1689, 1690 AND 1691 all his life time and knows no other land as home.**

**iv. THAT the 2<sup>nd</sup>, 3<sup>rd</sup> and, 4<sup>th</sup> defendants/respondents have now embarked on wanton destruction of the plaintiff/applicant tea bushes and have now threatened to evict him.**

**v. THAT unless the orders sought are granted the Plaintiff/ applicant will suffer irreparable damage.**

3. Prayer 2 was granted with the caveat that it should not be used to deny any of the parties access to portions of land they are in occupation thereof. Prayer 3 was granted . The application was fixed to be heard interpartes on 5/5/2016.

4. The 2nd application filed by the defendants is dated 23rd May, 2016 and seeks orders:-

**(1) THAT this application be certified urgent and be heard ex-parte in the first instance.**

**(2) THAT pending the hearing and determination of this application inter-partes or until further court orders this Honorable Court be pleased to order that a temporary injunction be issued restraining the plaintiff and his family membersrepresentatives, employees, servants ,agents and/or anybody else acting or claiming on his behalf from entering or trespassing into the 2nd , 3rd and 4th defendants parcels of land. L.R. NOS. NKUENE/URUKU/1688, 1689 and 1691 and picking their tea bushes, chasing them away there from, preventing them from cultivating and committing other acts of waste to the lands thereon and/or whatsoever interfering with the 2nd , 3rd and 4th defendants quiet, peaceful, uninterrupted actual and exclusive possession, cultivation, user, development and enjoyment in respect of L.R NOS. NKUENE/URUKU/1688, 1689 AND 1691.**

**(3) THAT the officer in charge of Nkando Police Post be empowered and ordered to ensure that the orders issued herein are obeyed by the plaintiff and his family members and that peace is maintained.**

**(4) That pending the hearing and determination of this suit or until further court orders this Honourable Court be pleased to order that a temporary (sic) in be issued restraining the plaintiff and his family members, representatives , employees, servants, agents and/or anybody else acting or claiming on his behalf from entering or trespassing into the 2nd, 3rd and 4th defendants parcels of land L.R NOS. NKUENE/URUKU/1688,1689 & 1691 and picking their tea bushes, chasing them away there from preventing them from cultivating and committing other acts of waste to the lands thereon and/or whatsoever interfering with the 2nd, 3rd and 4th defendants quiet, peaceful, uninterrupted actual and exclusive possession, cultivation, user, development and enjoyment in respect of L.R Nos. NKUENE/URUKU/1688, 1689 and 1691.**

**(5) That the costs of this application be provided for.**

5. The application is supported by the affidavit of one EVANGELINE KIRIGO and has the following grounds:-

**(1) THAT I am the 4th defendant in this suit and I have authority of the 1st,2nd and 3rd defendant's to swear this affidavit on their behalf hence competent to swear this Affidavit in support of our application herein.**

**(2) THAT the plaintiff is our brother , the 1st defendant is our father and the 2nd and 3rd defendants are my sisters . The 1st, 2nd, 3rd defendants and I are currently the registered proprietors of the suit lands. L.R. Nos. NKUENE/URUKU/1688 1689, 1690 AND 1691, respectively. Annexed hereto and marked as exhibit "EKII (a) (b) and (b) are copies of the title deeds.**

**(3) THAT our said suit Lands L.R Nos. NKUENE/URUKU/1688, 1689, 1690 and 1691 are subdivisions of L.R. No. NKUENE/URUKU/488 measuring about 1.94 HA or 4.79 acres which was registered in the name of the 1st defendant herein.**

**(4) THAT we are counseled by my Advocate on record, Mr. John Muthomi which counsel we verily believe to be true that on 20th April, 2016 the Plaintiff herein obtained a Court order restraining us from interfering with his quiet possession , occupation and utilization of a portion measuring 2 acres on the suit lands herein pending the inter parties hearing and determination of his application. That the Court further ordered that the said restraining order against us should not be used to dent any of the parties access to the portion of land they are in occupation thereof.**

**(5) THAT we are in actual possession and cultivating our respective aforesaid portions of land. We have fenced the same with barbed wire, own tea bushes, planted among others, Napier grass , cabbages, maize , yams bananas stems , arrow roots , sweet potatoes and Eucalyptus trees. Annexed hereto and marked as exhibit "EK13" are photographs of our developments.**

**(6) THAT the plaintiff does not live on any portion of the suit lands. He lives far away from the suit lands in two different places, namely, at NGOBIT near NANYUKI Town about 70 Kilometres away from the suit lands where he owns about 9 acres of land and lives with his first wife and at KAGANJONE about one Kilometer away from the suit lands where he lives with his second wife on a 2 acres parcel of land belonging to my late grandfather.**

**(7) THAT the plaintiff was supposed to get L.R.. NO. NKUENE/URUKU/1690 measuring about 2 acres which is currently registered in the name of our father, the 1st defendant herein. However, the Plaintiff refused to contribute to the expenses required in order to obtain his title deed thereof and my father is ready and willing to transfer this parcel of land to him as and when he will cater for his portion of the subdivision and transfer expenses.**

**(8) THAT the Plaintiff and his family members have been, armed with the Court Order Referred to herein above given on 20th April, 2016, entering our parcels of land L.R. NOS. NKUENE/URUKU/1688, 1689 and 1691 , picking our tea bushes, chasing us away there from preventing us from cultivating and committing other acts of waste to the lands thereon and boasting to all and sundry that the Court has granted him orders to do anything that pleased him on the suit lands. We reported him at NKANDO POLICE POST and it was recorded under OB NO. 02/2/5/2016.**

**(9) THAT the conduct of the Plaintiff of trespassing into our parcels of land and picking our tea bushes, chasing us away there-from preventing us from cultivating and committing other acts of waste to the lands thereon is against our rights to enjoyment of our said parcel of land.**

6. Prayers 2 and 3 were granted in terms of Section 63, CPA. As the Judge was going on leave the parties were to appear before the Deputy Registrar on 15/06/2016.

7. The third application was filed by the defendants and was dated 11th July, 2016. It sought orders:-

**(1) THAT this application be certified urgent and/or be heard on a priority basis.**

**(2) THAT this Honourable Court be pleased to cite for contempt of Court JULIUS KIAMBI M'IKIARA the Plaintiff herein who has willfully violated, disregarded and/or disobeyed this Honourable Court's orders herein granted on 25th May, 2016.**

**(3) THAT this Honourable Court be pleased to impose a fine not exceeding twenty (20) Million shillings or to imprisonment for a term not exceeding two (2) years or to both upon JULIUS KIAMBI M'IKIARA the Plaintiff herein for contempt of Court for willfully violating, disregarding and/or disobeying this Honourable Court's orders herein granted on 25th May, 2016.**

**(4) THAT there be such other order as this Honourable Court deems fit and expedient in the aid of justice.**

**(5) THAT the costs of this application be provided for.**

8. The application was supported by the affidavit of EVANGELINE KIRIGO IKIARA (op.cit) and had the following grounds:-

**(1) THAT this Honourable Court granted the 2nd, 3rd and 4th defendants an injunction on 25th May 2016 whereby the plaintiff and his family members, representatives, employees, servants, agents and/or anybody else acting or claiming on his behalf was restrained from entering or trespassing into the 2nd, 3rd and 4th defendants parcels of land L.R. Nos. NKUENE/URUKU/1688, 1689 AND 1691 and picking their tea bushes, chasing them away there- from , preventing them from cultivating and committing other acts of waste to the lands thereon and/or whatsoever interfering with the 2nd 3rd and 4th defendants quiet, peaceful , uninterrupted actual and exclusive possession, cultivation user, development and enjoyment in respect of L.R NOS. NKUENE/URUKU/1688, 1689 AND 1691 pending the hearing and determination of the 2nd , 3rd and 4th defendants' application dated 23rd May, 2016.**

**(2) THAT the said Court order was duly served upon the plaintiff's Advocate Messrs. GICHUNGE MUTHURI & CO. ADVOCATES and the Plaintiff personally on 26th May, 2016 and 30th May 2016, respectively.**

**(3) THAT in contumelious defiance of the said Injunctive Orders, the Plaintiff and his family members have continued to pick and uproot the 2nd , 3rd and 4th defendants tea bushes, chased them away from their parcels of land, prevented them from cultivating and committing other acts of waste to the lands thereon.**

**(4) THAT the said Court Order was also duly served upon the officer in charge of Nkando Police Post as ordered by this Honourable Court but no action has been taken by the police despite many requests and visits this necessitating this Application.**

**(5) THAT a disregard of a lawful court order is a serious matter for it interferes with the administration of justice, undermines and impairs the authority of the Court which dispenses justice, abuses justice and brings to ridicule the rule of law.**

**(6) THAT it's in the interest of justice that this Honourable Court does assert its authority in order to protect the dignity and confidence in the judicial system.**

***(7) THAT the said Court orders have neither been discharged nor stayed by an order of this Honourable Court.***

***(8) THAT the committal and/or fining of JULIUS KIAMBI M'IKIARA the plaintiff herein will be sufficient punishment to prevent future abuse of the Court process.***

***(9) THAT the 2nd, 3rd and 4th defendants have no other way of enforcing the said Court Orders.***

9. Directions were issued on 13/07/2016 and interpartes hearing was to take place on 20/07/2016.

10. On 20/07/2016, at the instigation of the Court, the parties agreed to maintain the Status Quo pending hearing and determination of all applications filed in the suit.

11. The following orders are granted.

***1. Status Quo be maintained as per consent dated 20/07/2016 pending hearing and determination of apposite issues raised by the 3 applications.***

***2. The 3 pending applications be heard through Written Submissions with each applicant having 14 days after the suit land is visited by the Courts Executive Officer in the presence of the area Chief and the parties' Advocates.***

***3. Parties' Advocates to move the Executive Officer appropriately and share costs of the visit AND the Executive Officer to visit the Locus in Quo within 14 days of today.***

***4. Alleged Contemnor in the application dated 11/07/2016, JULIUS KIAMBI M'IKIARA, to be personally served with the application for contempt proceedings and to BE personally present in Court on 20/09/2016.***

***5. Directions , by Consent, on 20/09/2016.***

12. ***It is so ordered.***

13. ***This Ruling has been Written and delivered in Court on 20/07/2016.***

***DELIVERED IN OPEN COURT AT MERU THIS 20TH DAY OF JULY, 2016 IN THE PRESENCE OF: -***

CC: Lilian /Daniel

Gichunge for the Plaintiff

Muthomi for the Defendants

**P.M. NJOROGE**

**JUDGE**