



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

**(ELC ) NO. 10 OF 2016**

CONSOLATA WANJA EUSTACE.....1ST PLAINTIFF  
MARY GORET KIRIGO MEME.....2ND PLAINTIFF  
JANE RITA GAITI.....3RD PLAINTIFF  
DAVD MWORIA.....4TH PLAINTIFF  
MARTIN MWENDA MEEM.....5TH PLAINTIFF  
GEORGE GIKUNDA MEME.....6TH PLAINTIFF

**VERSUS**

MEEM M'ARIMI.....DEFENDANT

**R U L I N G**

1. This Ruling concerns an application filed by the Plaintiffs dated 29/2/2016. It seeks the following orders:-

- 1. THAT this Application be certified as urgent and the same be heard exparte in the first instance.***
- 2. THAT the Honourable Court be pleased to issue an order of inhibition restraining the respondent by himself, servants or agents from charging, disposing, selling, alienating or adversely dealing with L.R. No. ABOGETA/U-CHURE/494 or any part thereof, pending the inter-parties hearing or pending further orders of the court.***
- 3. THAT pending the inte-parties hearing of this application, the Honourable Court be pleased to issue an order of temporary injunction restraining the respondent, his workers, agents, servants, contractors or anybody else acting at his behest, direction, contract or employment from interfering with the applicants use and occupation of land parcel No. ABOGETA/U-CHURE/494.***
- 4. That pending the hearing and determination of this suit, the Honourable Court be pleased to issue an order of temporary injunction restraining the respondent, his workers, agents, servants, contractors or anybody else acting at his behest, direction, contract or employment from interfering with the applicants' use and occupation of L.R NO. ABOGETA/U-CHURE/494.***

**5. THAT during the inter-parties hearing the Honourable Court do restrain the respondent or his agents, servants or anybody acting under his directive from selling, leasing, alienating or whatsoever interfering with L.R NO. ABOGETA/U-CHURE/494 pending the hearing and determination of this suit.**

**6. THAT Costs be provided for.**

2. The application is supported by the Affidavit of the 1st Plaintiff, CONSOLATA WANJA EUSTACE, sworn on 29/02/2016 which states as follows:-

I, CONSOLATA WANJA EUSTACE ID NO. 4470348 of P.O Box 73 Nkubu, of Upper -Chure sub-location, IGOKI LOCATION, ABOGETA DIVISION, within Meru County in the Republic of Kenya do hereby make oath and state as follows:-

**1. THAT I am an Adult female of sound mind and the Applicant herein well versed with the matter deponed to hereunder and therefore competent to make and swear this affidavit.**

**2. THAT I have the authority of my Co -plaintiffs/applicants to make and swear this affidavit on my own behalf and their behalf.**

**3. THAT the Defendant/Respondent and I, are husband and wife having celebrated our marriage in the month of February, 1964 under Meru Customary law, which marriage was later solemnized in 1999 at St. Andrews Tharu Catholic Church, within Meru County.**

**4. THAT during our union/marriage we acquired two parcels of land to wit; L.R. No. ABOGETA/U-CHURE/494 measuring 1.30. Hectares and another land in KIAMURI "A" measuring 3 Acres.**

**5. THAT we were blessed with the following issues of the marriage:-**

**(a) ANTHONY MWITI MEME.....SON**

**(b) MARY GORET KIRIGO MEME.....DAUGHTER**

**(c) JANE RITA MEME.....DAUGHTER**

**(d) DAVID MWORIA MEME.....SON**

**(f) MARTIN MWENDA MEME.....SON**

**(g) GEORGE GIKUNDA MEME.....SON**

**6. THAT the Respondent/Defendant is the registered proprietor of land parcel No. ABOGETA/U-CHURE /494 measuring 1.30 Ha. (Annexed herewith find a copy of the register marked "CWE1")**

**7. THAT the Respondent/Defendant was registered with L.R. NO. ABOGETA/U-CHURE/494 to hold in trust on his behalf and that of the applicants herein.**

**8. THAT in 1967 or thereabouts the Respondent and I, built and or established our matrimonial home at L.R. No. ABOGETA/U- CHURE/494. (Annexed herewith find photographs of our matrimonial home marked "CWE 2(a)" and "CWE 2 (b)".**

**9. THAT in 2011 or thereabouts the Respondent abandoned our matrimonial home wherein he moved from L.R. NO. ABOGETA/U- CHURE/494 to the family land at KIAMURI 'A' whereof he built another home where he cohabits with one LUCY as husband and for all intent**

and purposes. (Annexed herewith find photographs of the KIAMURI “A” home and marked “CWE 3”).

10. THAT in the year 2015 the Respondent held a family and clan elders meeting and subdivided to the Applicants L.R. NO. ABOGETA/U-CHURE/494 with the 4th, 5th and 6th Applicant getting 0.85 acres or 85 points of an Acre and the balance remaining with me and the 2nd and 3rd Applicants.

11. THAT each of us developed our portions intensively by planting banana plantations, Tea bushes, food crops, trees, Arrow roots and by building semi-permanent houses where we live to date.

12. THAT the Respondent got married to another wife and to dispossess me (sic).

13. THAT propelled by his 2nd wife the Respondent has declared that our children and I, would suffer and end up with nothing.

14. THAT true to his word, on 15 February, 2016 the Respondent came to our matrimonial home, assaulted me and maliciously caused extensive damage to my house and threatened to sell and or alienate all that land known as L.R. NO. ABOGETA/U-CHURE/494. (Annexed herewith find photographs marked “CWE 4”).

15. THAT the respondent lives on our family land at KIAMURI “A” with his 2nd wife but has persisted on interfering with our use and occupation of our portions in L.R NO. ABOGETA/U-CHURE/494 and even threatened to evict me calling me a witch.

16. THAT the Respondent may transfer L.R. NO. ABOTHUGUCHI/U-CHURE/494 has threatened (sic) thus defeating our interest and rendering us destitute.

17. THAT we have occupied and developed the said parcel of land since our childhood with the hope that the Respondent /Defendant will transfer the said parcel to us in compliance with the trust.

18. THAT I am likely to suffer irreparable loss together with my Co-applicants if the said Respondent /Defendant is not stopped or enjoined from selling, leasing or alienating or meddling with the suit land since it's our source of livelihood for the entire family.

19. THAT I pray that the Honourable Court do issue the orders herein to protect the said land parcel from alienation thus defeating the applicants interests.

20. THAT unless we are granted the order sought the Respondent/ Defendant will continue his illegal acts before this suit is fully heard occasioning upon the applicants great loss and damage.

21. THAT it is only fair, apt and just that this application be allowed.

22. THAT what is deponed to hereunder (sic) is true to the best of my knowledge, information and belief.

3. The Defendant/Respondent opposes the application through his Replying Affidavit sworn on 09/03/2016 and which says:-

1. THAT I am a Male Adult of sound mind well versed with the matters deponed to hereunder and therefore competent to make and swear this affidavit.

2. THAT I have read and understood the Notice of Motion dated 29th February, 2016 along with the Supporting Affidavit and annexures and it is in reply thereto that I make and swear this

**Affidavit.**

- 3. THAT I accept that the 1st Applicant is my wife and we have issues as captured vide Paragraph 5 of the Supporting Affidavit.**
- 4. THAT I however very categorically, strongly and specifically deny that land parcel No. ABOGETA/U-CHURE/494 or indeed the Kiamuri Land were jointly acquired with the 1st Applicant.**
- 5. THAT as can readily be discerned from the Applicants' annexure "C.W. E.1 copy of the register to land parcel NO. ABOGETA/UPPER-CHURE/494, this is a piece of land i bought solely out of my resources from one MBURUGU S/O IMUGUU and the same was transferred to me on 4th August, 1966.**
- 6. THAT similarly I bought the Kiamuri Land from one DANIEL M'MUGAMBI KING'INYA.**
- 7. THAT these two parcels are therefore not family land.**
- 8. THAT the family land is land parcel NO. ABOGETA/UPPER-MIKUMBUNE/200 measuring five (5) acres or thereabout which is in the names of my father M'ARIMI LANGATA who is my father. Annexed and marked "MM 1" is a copy of the title deed.**
- 9. On this land I am entitled to one (1) acre after sharing with my other three (3) brothers and it is here that I have settled our eldest son, ANTONY MWITI MEME.**
- 10. That as long as I am alive, I will not share and give title deed to my children moreso when they want to force me to do so.**
- 11. THAT infact, I am advised by my Advocates on record which advise I verily believe to be true that what I have stated vide paragraph 9 above is what the Law provides.**
- 12. THAT i have struggled as a peasant farmer to educate Antony Mwiti Meme and the 2nd to the 6th Applicants, out of my meagre resources gotten from my land parcel No. ABOGETA/U-CHURE/ 494 and the Kiamuri land up to the level they could attain.**
- 13. THAT infact, except for the 5th Applicant and ANTHONY MWITI MEME who love the bottle a little too closely, the others are handsomely educated and employed. Infact, the 3rd and 6th Applicants are masters Degree holders and well endowed financially.**
- 14. THAT instead of assisting me in my old age, they have chosen to fight me.**
- 15. THAT the 1st Applicant started mistreating me, refused to cook for me and would disappear from home for weeks on end purporting that she had gone to see her children as a result of which I would have nobody to cook for me, a situation completely unacceptable by me.**
- 16. THAT I do not intend and will not sell any of my two parcels of land. if i had wanted to, i would have sold the same ages ago.**
- 17. THAT I never assaulted the 1st Applicant as she alleges.**
- 18. THAT on 25th December 2015, I met with the Applicants and ANTHONY MWITI MEME, no outsiders present, and I showed the 4th to the 6th Applicants where they would build but never specified the size or indicated they would get titles thereof.**
- 19. THAT the Applicants should get their own parcels like the 2nd and 3rd Applicants have at Kiamuri, Meru and Nairobi.**

**20. THAT i cannot be injuncted from entering or utilizing or enjoying my own land.**

**21. That the Applicants should not interfere with my tea bushes, trees , my buildings and other developments.**

**22. THAT there is no reason to why (sic) my land parcels should be inhibited.**

**23. THAT the present Notice of Motion is dishonest and should be dismissed with costs.**

**24. THAT what is deponed to hereunder is true to the best of my knowledge, information and believe (sic).**

4. The application was heard ex-parte on 02/03.2016 . On 03/08/2016, I directed in the absence of the parties that this application be heard interpartes on 30/08/2016. On 30/08/2016 Mr. Mutegi for the Defendant /Respondent was in Court but the Plaintiffs/Applicants and their Advocate were not in Court . Indeed the Plaintiff's Advocate was aware of today's date as Advocate Omari was holding brief for him in ELC 21 of 2014 which was called out immediately before this application was called out.

5. Mr. Mutegi for the Defendant/ Respondent asked the Court to dismiss the application for non-attendance by the Plaintiffs and their Advocate. He prayed that the exparte orders granted on 2/3/2016 be vacated.

6. Mr. Mutegi told Court that the Defendant/Respondent had no intention of selling the suit land. He told the Court that the Plaintiffs were living in Nairobi and had left the very sick Defendant alone. He told the Court that the 1st Plaintiff was his wife and the other Plaintiffs were his children.

7. Mr. Mutegi said that the orders granted exparte on 03/08/2016 injuncted the Defendant from accessing his own land. He asked the Court to find this irregular. He also said that the Defendant was very sick and needed to sell his trees on the suit land to get money for his medical expenses as he was very sick.

8. I have considered the pleadings proffered by the parties and the oral Submissions made by Mr. Mutegi for the Defendant. I do agree with him that Courts do not normally injunct an owner of land from accessing his land. This may be done in very rare circumstances. I find that the circumstances of this case do not warrant the granting of Injunctive Orders restraining the Defendant from accessing his land.

9. Many of the issues canvassed by the parties can only be determined after the main suit has been heard.

10. I issue the following orders:-

**(1) This application is dismissed with costs to be in the cause.**

**(2) In the interest of Justice and in accordance with Section 63, CPA, an Order of Inhibition is issued restraining the Respondent by himself, servants or agents from charging, disposing, selling or alienating Land Parcel No. ABOGETA/U-CHURE/194 pending hearing and determination of this suit.**

**(3) It is so ordered.**

**DELIVERED IN OPEN COURT AT MERU THIS 30<sup>TH</sup> DAY OF AUGUST, 2016 IN THE PRESENCE OF:-**

CC: Lilian/Daniel

Munene h/b Mutegi for the Defendant

Plaintiffs and their Advocate absent

**P. M. NJORGE**

**JUDGE**