



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**

**AT NAIROBI**

**ELC NO. 863 OF 2015**

**BISHOP JOSEPH MOILO.....1<sup>ST</sup> PLAINTIFF**

**FRANCIS NDUNGI KAGIA.....2<sup>ND</sup> PLAINTIFF**

**JOSEPHAT GITAU.....3<sup>RD</sup> PLAINTIFF**

**(Suing on their own behalf and in their capacities**

**as the National Officials of BETHEL CHURCH)**

**VERSUS**

**BISHOP JOHN NJUKI KARIUKI.....1<sup>ST</sup> DEFENDANT**

**JAMES MURIGI WANJIKU.....2<sup>ND</sup> DEFENDANT**

**PETER MUIRURI KABIRU.....3<sup>RD</sup> DEFENDANT**

**GERALD WAMBUGU KIHU.....4<sup>TH</sup> DEFENDANT**

**(Sued on their own behalf and as officials of BETHEL CHURCH OF GOD)**

**RULING**

On 9<sup>th</sup> September 2015, the Plaintiffs filed an application herein by way of Notice of Motion of the same date seeking among others the following orders:-

a) THAT the instant matter be certified as urgent and heard ex-parte in the first instance during the current High Court vacation.

b) THAT the defendants by themselves, their agents, employees, servants, followers, proxies and congregates be restrained by way of an injunction from interfering with the Plaintiffs/Applicants use and/or quiet enjoyment of the properties, worship centres and/or churches situated on LR No. LIMURU/BIBIRIONI/T.249&LIMURU/BIBIRION /T.252(NgararigaChurch),LIMURU/RIRONI/531&LIMURU/RIRONI/893(Rironi Church),

LIMURU/NGECHA/T.217 (Ngecha Church) or any other property, worship centre and/or church run, operated, controlled, sponsored and/or registered in favour of BETHEL CHURCH in Kenya pending the hearing and determination of the suit herein.

c) THAT the Defendants by themselves, their agents/employees, servants, followers, worshippers, proxies and/or congregates be restrained by way of an injunction from inciting, intimidating and/or interfering in whatsoever manner with the Plaintiffs/Applicants running and/or administration of BETHEL CHURCH, its properties, worship centres and/or churches wherever situated in Kenya pending the hearing and final determination of the suit herein.

d) THAT for the maintenance of law and order, the OCPD Limuru Sub-county based at Tigoni Police Station – Limuru alongside the local Sub-county administrator be at liberty to enforce the orders sought and granted herein and in particular to ensure that any injunction orders issued herein are respected and/or obeyed by the Defendants/Respondents.

e) THAT the Honourable court be at liberty to issue any further or other orders as it may deem appropriate for the maintenance of law and order to facilitate the Plaintiffs/Applicants and the congregates of BETHEL CHURCH to enjoy their constitutional freedom of worship, association and the right to property pending the hearing and final determination of the suit herein.

f) THAT pending the inter-parties hearing of the instant application, there be an interim order in terms of prayer 2 and/or 3 hereinabove.

The Defendants after filing their defence and counter-claim against the Plaintiffs also filed an application by way of Notice of Motion dated 23<sup>rd</sup> September 2015 on the same day seeking the following orders:-

a) This Honourable court be pleased to certify this application as urgent.

b) That the service of the application be dispensed with in the first instance owing to the urgency of the matter.

c) That the Defendants herein do have leave to defend this suit on behalf of themselves and also on behalf of all members of Bethel Church of God.

d) That the Defendants do have the permission of this Honourable Court to serve the defence and counter-claim upon its members through an advertisement in the Daily Nation.

e) That the Plaintiffs be restrained by themselves, their servants and agents from entering, remaining or being on the Defendants/Applicants parcels of land known as Bibirion T249 and 252, Rironi Plot No. 531 and 893; Limuru/Ngecha/T217 until further orders of this Honourable Court.

f) That the Plaintiffs be restrained by themselves, their servants and agents from entering, remaining or being on the Defendants/Applicants parcels of land known as Bibirion T 249 and 252, Rironi Plot No. 531 and 893; Limuru/Ngecha/T217 pending the hearing and determination of this suit.

g) That this Honourable court be pleased to discharge the orders which were made herein on 10<sup>th</sup> September 2015.

h) That this Honourable Court be pleased to stay further proceedings in this suit pending the hearing of High Court ELC Suit No. 453 of 2015; Bishop John Njuki Kariuki and Others Vs. Bishop Joseph Moilo and others or completion of mediation ordered in the said suit.

i) That the costs of this application be provided for.

The two applications were consolidated and heard together. In a detailed ruling delivered by this court on 18<sup>th</sup> December 2015, I allowed the Plaintiffs' application dated 9<sup>th</sup> September 2015 in terms of prayers

(d), (e) and (f) that sought injunctive reliefs against the Defendants. With regard to the Defendants' application dated 23<sup>rd</sup> September 2015, I declined to grant the injunctive reliefs that the Defendants had sought against the Plaintiffs. The Defendants were dissatisfied with the said ruling of 18<sup>th</sup> December 2015 and filed a notice of intention to appeal against the same to the Court of Appeal on 23<sup>rd</sup> December 2015. The Defendants also did a letter to the court requesting for copies of proceedings and ruling for the purposes of the intended appeal.

On 6<sup>th</sup> January 2016, the Defendants brought an application by way of Notice of Motion of the same date seeking the following orders;

1. That the application be certified as urgent.
2. That service of the application be dispensed with in the first instance owing to the urgency of the matter.
3. That this Honourable Court be pleased to suspend the order made herein on 18<sup>th</sup> December 2015 allowing the Plaintiff's application dated 9<sup>th</sup> September 2015 until further orders of this Honourable Court.
4. That this Honourable Court be pleased to suspend the orders made herein on 18<sup>th</sup> December, 2015 pending lodging, hearing and determination of the Defendants' intended appeal against the ruling delivered herein on 18<sup>th</sup> December 2015.
5. That the Plaintiffs be restrained by themselves, their servants and agents from entering, remaining or being on the Defendants/Applicants parcel of land known as Bibirioni T249 and 252, Rironi Plot No. 531 and 893; Limuru/Ngecha/T217 until further orders of this Honourable Court.
6. That the Plaintiffs be restrained by themselves, their servants and agents from entering, remaining or being on the Defendants/Applicants parcels of land known as Bibirioni T249 and 252, Rironi Plot No. 531 and 893; Limuru/Ngecha/T217 pending lodging, hearing and determination of the Defendants' appeal against the ruling delivered herein on 18<sup>th</sup> December 2015.
7. That the costs of this application be provided for.

The Defendants application was brought on among other ground that the Defendants who were dissatisfied with the decision of the court made on 18<sup>th</sup> December 2015 had filed a notice of appeal and that they have brought the application for conservatory orders. The Defendants contended that the court has jurisdiction to grant the orders sought in the application and that the said orders would not cause any prejudice to the Plaintiffs. In his affidavit in support of the application, Bishop John Njuki Kariuki the 1<sup>st</sup> Defendant stated as follows. The Defendants' application is seeking conservatory orders pending the hearing and determination of the intended appeal by the Defendants to the court of Appeal against the decision of this court made on 18<sup>th</sup> December 2015. The court has jurisdiction to grant the conservatory orders sought and to suspend the orders of injunction that it had granted infavour of the Plaintiffs. The Plaintiffs would suffer no prejudice if the said conservatory orders and the order suspending the injunction that had been granted in their favour are granted. The Plaintiffs have treated the prohibitory injunction which were granted by the court on 18<sup>th</sup> December 2015 as if the same were mandatory in nature and have used the same to evict the Defendants from their places of worship which had never been used by the Plaintiffs before. The 1<sup>st</sup> Defendant stated further that as a result of the said orders of 18<sup>th</sup> December 2015, the Defendants and their supporters have been deprived of their places of worship. He stated that the plaintiffs have treated the said orders as if the same are a final determination of the dispute between the parties and have thereby used the same to evict the Defendants' followers from their places of worship in other parts of the country where there were no disputes over places of worship as between the parties herein. The 1<sup>st</sup> defendant stated further that the Plaintiffs have used the said orders to seek the handing over by the Defendants of their places of worship through the assistance of the Chiefsat Rironi,

ngecha and Kabuku. The 1<sup>st</sup> Defendant stated that the orders given on 18<sup>th</sup> December 2015 deprived the Defendants of their places of worship while this suit is pending. He urged the court to consider substantive justice and grant the orders sought so as to maintain the status quo.

The Defendants' application was opposed by the Plaintiffs through affidavits sworn by the 1<sup>st</sup> Plaintiff, Bishop Joseph Moilo on 3<sup>rd</sup> February 2016. In his affidavit, the 1<sup>st</sup> Plaintiff stated that there is no basis upon which the court can grant the conservatory orders sought by the Defendants and suspend the injunction that had been granted in favour of the Plaintiffs on 18<sup>th</sup> December 2015. The 1<sup>st</sup> Plaintiff stated that if the injunctive orders of 18<sup>th</sup> December 2015 are suspended, the court would have allowed the mischief that the Plaintiffs had intended to arrest by coming to court. The 1<sup>st</sup> Plaintiff stated that the court would have permitted the Defendants to take over the assets of the Plaintiffs unlawfully a situation that would lead to a breakdown of law and order. The 1<sup>st</sup> Plaintiff denied that the Plaintiffs have used the orders issued herein on 18<sup>th</sup> December 2015 to evict the Defendants from their places of worship. The 1<sup>st</sup> Defendant stated that it is the Defendants who have been trying to forcefully take over the Plaintiffs' properties. The 1<sup>st</sup> Defendant stated that the authorities which were cited by the Defendants in their affidavit in support of the application are distinguishable and irrelevant and that the Defendants have not brought anything new before the court that would justify the granting of the orders sought.

The 1<sup>st</sup> Defendant swore a further affidavit on 1<sup>st</sup> March 2016 in response to the Plaintiff's affidavit in reply to the Notice of Motion dated 6<sup>th</sup> January 2016. The 1<sup>st</sup> Defendant reiterated that the effect of the orders of 18<sup>th</sup> December 2015 was to evict the Defendants from their places of worship.

The Defendants' application was argued by way of written submissions. Both parties filed two (2) sets of written submissions each. In their submissions, the Defendants cited several authorities in support of the orders sought and for which I am grateful. The court was referred to the case of **Madhupaper International Ltd vs. Kerr [1985] KLR 840** where the court of appeal stated that this court has jurisdiction to grant injunction after refusing an earlier application with a view to protect the subject matter of an intended appeal. In that case, it was held among others that;

**“When a judge dismisses an application for interlocutory injunction, he has jurisdiction to grant unsuccessful applicant an injunction pending an appeal against the dismissal and there is no inconsistency in doing so as the purpose of granting the injunction would be to prevent the decision of the appellate court from being nugatory should the appeal succeed.”**

The court was also referred to the case of **Butt vs. Rent Restriction Tribunal [1982] KLR 417** where the court stated at page 419 that:-

**“It is the discretion of the Court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in away so as not to prevent the appeal, if successful from being nugatory.....”**

The court was also referred to the case of **African Safari Club vs. Safe Rentals Ltd, Court of Appeal at Nairobi, Civil Appeal No. 52 of 2010** where the court stated among others that:-

**“With the above scenario of almost equal hardship by the parties it is incumbent upon the court pursuant to the overriding objective to act justly and fairly. The first role we have undertaken in this regard is to consider the hardships of the two parties before us. The second role is to put the hardships on the scales. We think that the balancing act as described in the analysis of the positions of the parties before us is in keeping with one of the principal aims of overriding objective of treating both parties with equality or in other words, placing them on equal footing as far as is practicable pending the determination of the intended appeal on merit. Thus we think is what the special circumstances of the situation before us and justice demand. We believe that the rules of procedure including**

**rules 5(2) (b) have considerable value in terms of administration of justice but the new challenge brought about by the enactment of the overriding objective principle brings into focus the fundamental purpose of Civil Procedure which is to enable the courts to deal with cases justly and fairly.”**

The Defendants have submitted that they will be prejudiced if the conservatory orders sought herein are not granted since the Plaintiffs have sought the assistance of the Administration Police to assist them in enforcing the orders issued herein on 18<sup>th</sup> December 2015 by evicting the Defendants from their places of worship.

The Defendants also cited the Court of Appeal case of **E. Muiru Kamau and Another vs. National Bank of Kenya Ltd.**[2009]eKLR in which the court observed as follows;

**“The courts including this court in interpreting the Civil Procedure Act must take into consideration the overriding objective as defined in the two Acts. Some of the Principal aims of the overriding objective include the need to have regard to the principle of proportionality and the need to create a level playing ground for all the parties coming before the courts by ensuring that the principle of equality of all is maintained and that as far as it is practicable to place the parties on equal footing.”**

The Defendants submitted that this court has an inherent obligation to preserve the subject matter of this suit pending appeal and that unless the orders sought are granted there will be a barren result if the Defendants are successful in the intended appeal.

In reply to the Defendants’ submissions, the Plaintiffs submitted that the Defendants have not met the threshold set out under Order 42 rule 6 of the Civil Procedure Rules. The Plaintiffs submitted that the Defendants have failed to demonstrate that they stand to suffer substantial or irreparable loss unless the orders sought are not granted. The Plaintiffs submitted that the Defendants have not placed any evidence before the court that they either own or are in occupation of the places of worship which they claim to have been evicted from and as such they have not laid any basis factual or legal to justify the orders sought. The Plaintiffs submitted that it is the Plaintiffs who would suffer substantial and irreparable loss if the orders sought are granted because the same would result in the Plaintiffs being denied the use and control of the churches or places of worship in dispute which they have owned for several years. The Plaintiffs submitted that balancing the interests of both parties, the orders sought cannot be granted. The plaintiffs submitted further that the court having issued an injunction infavour of the Plaintiffs against the Defendants, the court cannot be called upon to suspend the said injunction and issue another injunction infavour of the Defendants in respect of the suit properties. The Plaintiffs submitted that unless the injunction issued earlier by the court in favour of the Plaintiffs is varied and/or set aside the court cannot issue another injunction in favour of the Defendants. The Plaintiffs urged the court to dismiss the Defendant’s application as lacking in merit.

I have considered the Defendants’ application and the two (2) affidavits filed in support thereof. I have also considered the Plaintiffs’ affidavit in reply to the application and the submissions by both parties. I had set out in detail the facts that gave rise to this suit and the parties’ respective cases in my ruling of 18<sup>th</sup> December 2015. I do not wish to repeat the same herein. In summary, the bone of contention between the parties are the churches or worship centers situated within the Republic of Kenya which are claimed by both the Plaintiffs and the Defendants. The said churches or worship centers includes those situated on LR No. Limuru/Bibirioni/T. 249, LR No.Limuru/Bibirioni/T.252, LR No.Limuru/Rironi/531, LR No.Limuru/Rironi/893 and L.R No.Limuru/Ngecha/T.217 (hereinafter referred to as “the suit properties”).

In their plaint and application which was the subject of the ruling delivered on 18<sup>th</sup> December 2016, the Plaintiffs averred that Bethel Church on whose behalf they brought this suit is the registered owner of the suit properties on which the said Church’s Ngarariga, Rironi and Ngecha branches or worship centers are situated. The Plaintiffs averred that the Defendants broke away from Bethel Church in 2014 and formed a new church, Bethel Church of God which was registered in the year 2015. The Plaintiffs averred that

after breaking away and forming the new church, the Defendants engaged in acts aimed at interrupting and interfering with worship services and operation of the Plaintiff's churches in Kiambu County and other parts of Kenya. The Defendants were accused of attempting to take over Bethel churches at Ngarariga, Rironi, Ngecha and Nderu in Kiambu County. The Plaintiffs averred that the Defendants said activities were illegal and amounted to an infringement of the Plaintiffs' proprietary rights over the suit properties. In their application for injunction dated 9<sup>th</sup> September 2015, the Plaintiffs sought orders restraining the Defendants from interfering with their use and/or quiet enjoyment of the properties, worship centers and/or churches situated on the suit properties and any other properties or worship centers or churches registered in the name of Bethel Church within the Republic of Kenya pending the hearing and determination of this suit. The Plaintiffs also sought an order that the O.C.P.D Limuru sub-County and Limuru Sub-County administration do assist in the enforcement of the said orders of injunction if granted. In their affidavit in support of the application for injunction, the Plaintiffs claimed that even though the Defendants had broken away and formed a new church, Bethel Church of God, they continued disrupting worship services at the churches or worship centers on the suit properties. The Plaintiff claimed that as a result of the defendant's activities aforesaid, some churches had to be closed while in some, the worship services had to be cancelled to avoid confrontation.

In response to the Plaintiff's application dated 9<sup>th</sup> September 2015, the Defendants after filing a defence and counter-claim filed a counter-application for injunction against the Plaintiffs by way of Notice of Motion dated 23<sup>rd</sup> September 2015. In the response to the Plaintiffs' application for injunction and in support of their own application for injunction, the Defendants admitted that they indeed broke away from Bethel Church and formed Bethel Church of God which was registered in the year 2015. The defendants claimed however that the suit properties and the churches or worship centers situated thereon although registered in the name of Bethel Church belonged to Bethel Church of God either through the contribution that had been made by the members of Bethel Churches who had defected to Bethel Church of God or thorough a separation agreements which the Plaintiffs and the Defendants had entered into in the year 1997 and on 15<sup>th</sup> December, 2014. The Defendants contended that it was the Plaintiffs who had resorted to violence to take over the churches and worship centers that belonged to Bethel Church of God and which were being used by the members of Bethel Church who had broken away and joined Bethel Church of God for several years.

As I have stated earlier in this ruling, the two applications for injunction were heard together and what the court had to determine was; as between Plaintiffs and the Defendants who had established on a prima facie basis to be entitled to the suit properties and that they would suffer irreparable injury if the injunction which each had sought was not granted. After considering the parties' respective cases, I was satisfied that Bethel Church which is represented by the Plaintiffs herein and which is registered as the proprietor of the suit properties had established a prima facie case against the Defendants with a probability of success. After considering the material that was placed before me, I was also satisfied that Bethel Church would suffer irreparable harm if the injunction sought was not granted. I was not persuaded at that stage that the Defendants had demonstrated on a prima facie basis their interest in the suit properties. In view of the said conclusions, I made a finding that the Plaintiffs were entitled to the injunction which they had sought against the Defendants and rejected the Defendants counter-application for injunction.

The Defendants who were dissatisfied with that decision have now come back before the court with the present application seeking "to suspend" the order of injunction that was granted by the court herein on 18<sup>th</sup> December 2015 and injunction to restrain the Plaintiffs from entering, remaining on or being on the suit properties pending the lodging, hearing and determination of the appeal which the Defendants intend to file at the Court of Appeal against the court's ruling of 18<sup>th</sup> December 2015. In my view what the Defendants have sought from this court is a stay of the order of injunction which this court granted in favour of the Plaintiffs and the granting to the Defendants of the injunction which they had sought and which the court declined to grant pursuant to the said ruling. The Defendants' application therefore has two (2) limbs which have to be considered separately.

I will first consider the limb of the application which seeks a stay of the injunction orders which were

granted infavour of the Plaintiffs on 18<sup>th</sup> December 2015. The Defendants application was principally brought under Order 42 rule 6 of the Civil Procedure Rules. Order 42 rule 6(1) of the Civil Procedure Rules gives the court power to grant a stay of an order or decree issued by the Court. Order 42 rule 6(2) (a) and (b) of the Civil Procedure Rules provides that:-

**“No order for stay of execution shall be made under sub-rule (1) unless-**

**(a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and**

**(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”**

I am in agreement with the submissions and authorities cited by the Defendants to the effect that when the court is considering an application for stay, the hands of the court are not tied to the conditions provided under order 42 rule 6(2) of the Civil Procedure Rules. I am also in agreement with the submissions by the Defendants that in interpreting the provisions of Order 42 rule 6(2), the court must take into consideration the overriding objectives as defined in the Civil Procedure Act which includes the need to act justly in every situation and to create a level playing ground for all the parties coming before the courts. The onus was upon the Defendants to show that they would suffer substantial loss if the stay sought is not granted and that it would be just in the circumstances of this case to grant the order. The Defendants have contended that the Plaintiffs have treated the orders which were issued herein on 18<sup>th</sup> December, 2015 as mandatory in nature and are using the same to evict the Defendants from their places of worship. The defendants have contended that if the stay sought is not granted and the Plaintiff's succeed in evicting them, the appeal which they intend to file against this court's order of 18<sup>th</sup> December 2015 would be rendered nugatory. The Defendants have also claimed that on account of the said orders they are now forced to move from place to place in search premises to meet as a church. The Defendants have also claimed that through the said orders, the court in effect sealed their fate in that the court handed over to the Plaintiffs the suit properties thereby leaving nothing to be determined at the trial.

I am not satisfied on the material before me that the Defendants would suffer substantial loss if the stay sought is not granted. Apart from the averments in the affidavit in support of the application which have been controverted by the Plaintiffs, the Defendants have not placed any other evidence before the court showing that they were the ones in occupation of the worship centers or churches situated on the suit properties and that as a result of the orders of 18<sup>th</sup> December, 2015, they have been evicted or are in the process of being evicted from the said churches or worship centers. As I have stated earlier in this ruling, the Plaintiffs filed this suit claiming that the Defendants were interfering with their churches on the suit properties and were attempting to take over the same. The court after considering the representations by both parties was persuaded that indeed the Defendants were guilty of the allegations that had been made against them and issued an injunction restraining them from committing the said acts which they were accused of. I am in agreement with the submissions by the Plaintiffs that the Defendants have placed no new material before the court on the basis of which the court can arrive at a different conclusion on the issue as to who as between the Plaintiffs and the Defendants were in possession of the churches on the suit properties. I have also not been persuaded by the Defendants' contention that the orders that were issued by this court on 18<sup>th</sup> December 2015 were mandatory in nature. The Plaintiffs did not seek mandatory injunction and the court did not grant any. As I have stated above, there is no evidence that the said orders have been used to evict the Defendants from their places of worship or churches. I have also not been convinced that the intended appeal by the Defendants would be rendered nugatory if the stay sought is not granted. The orders that were granted by the court were temporary in nature pending the hearing and determination of this suit. This court did not in any way determine with any finality the rights of the parties over the suit properties. What the court did was only to bring some semblance of order in the relationship of the parties pending the determination of the parties' respective claims. I am unable to see how the Defendants' intended appeal against the said interlocutory orders would be rendered nugatory if the stay sought is not granted. If the Court of Appeal finds that this court was wrong in granting interlocutory injunction to the Plaintiffs and denying the Defendants the same and reverses the

orders of 18<sup>th</sup> December 2015, the parties would revert to the status quo prior to the date of the said orders. The Defendants have not persuaded me that it would be impossible to revert to the position of the parties prior to the ruling of 18<sup>th</sup> December 2015. For the foregoing reasons, I find no merit in the Defendants' prayer seeking a stay or suspension of the orders of injunction that were granted infavour of the Plaintiffs herein on 18<sup>th</sup> December, 2015.

Apart from the stay, the Defendants had also sought an injunction restraining the Plaintiffs from entering, remaining on or being on the suit properties pending the lodging, hearing and determination of the intended appeal. I am fully in agreement with the position of the law as set out in the various authorities which were cited before me by the Defendants to the effect that this court has jurisdiction to grant a temporary injunction pending the hearing and determination of an appeal against its refusal to grant the injunction in the first instance. I am of the view however that the situation at hand is different from those which were dealt with in the authorities cited by the Defendants. In none of the authorities cited by the Defendants was the court dealing with a situation like in the present case where both the Plaintiffs and the Defendants had sought temporary injunction and the court had granted injunction to one party and deprived the same to the other. I am in agreement with the submission by the Plaintiffs that unless the injunction that was granted to the Plaintiffs is set aside or vacated, the court cannot grant another injunction infavour or the Defendants in respect of the suit properties pending the lodging, hearing and determination of the Defendants appeal against the court's refusal to grant them injunction. What the Defendants have sought from this court is for the court to reverse its earlier decision by which it had granted the Plaintiffs an injunction and denied the Defendants the same pending the hearing of the suit and replace the same by an order suspending or staying the injunction that had been granted in favour of the Plaintiffs and granting the injunction to the Defendants who had been denied such injunction in the first instance. Having held hereinabove that the Defendants have not given sufficient grounds to justify the stay or suspension of the orders of injunction which were granted herein on 18<sup>th</sup> December 2015 in favour of the Plaintiffs, I am of the view that the injunction sought by the Defendants pending appeal cannot issue. If such orders were to issue, the same would be in conflict with the orders made infavour of the Plaintiffs on 18<sup>th</sup> December, 2015. I wish to say that in arriving at the decision that I made on 18<sup>th</sup> December 2015, I considered all the relevant factors and concluded that it was just and fair in the circumstances to grant the orders that had been sought by the Plaintiffs. I am in agreement by the Defendants contention that the Court of Appeal may reach a different conclusion from that which I had reached. I am however not sitting on appeal against my own decision. I have also not been called upon to review the same. As I have mentioned earlier, I have jurisdiction to grant the injunction sought by the Defendants. In the circumstances of this case however, I am not satisfied that any good grounds exist that would justify the reversal of my decision on the issue of the interlocutory injunction. As I have stated above, the Defendants have not satisfied me that they would suffer substantial loss unless the orders sought are granted. I am also not persuaded that the intended appeal would be rendered nugatory unless the injunction sought is granted.

In the final analysis and for the foregoing reasons, I find the Defendants application to be without merit. In the interest of justice and fairness however, I would make an order to preserve the suit properties pending the hearing and determination of the Defendants' intended appeal. My final orders in the matter shall be as follows;

1. The Defendants' Notice of Motion application dated 6<sup>th</sup> January 2016 is dismissed with costs to the Plaintiffs.
2. Pending, the lodging, hearing and determination of the appeal which the Defendants intend to file in the Court of Appeal against the ruling and order made by this court on 18<sup>th</sup> December 2015 or further orders by the court, there shall be an inhibition inhibiting the registration of any other or further dealings with all those parcels of land known as LR No. Limuru/Rironi/T.249, L.R No. Limuru/Rironi/T.252, L.R No. Limuru/Rironi/531, L.R No. Limuru/Rironi/893 and L.R No. Limuru/Ngecha/T.217.

**Delivered and Dated at Nairobi this 2<sup>nd</sup> day of August, 2016**

**S. OKONG'O**

**JUDGE**

**In the presence of**

**Ms. Wambua for the Plaintiffs**

**Dr. Kamau Kuria for the Defendants**

**John Court Assistant**