



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ENVIRONMENT AND LAND NO 289 OF 2013**

**ISILOLO PRINTING PRESS.....1ST PLAINTIFF/APPLICANT**

**VERSUS**

**ROBE GODANA .....1ST DEFENDANT/RESPONDENT**

**ISAIAH KOBIA .....2ND DEFENDANT/RESPONDENT**

**JULIUS MWENDA .....3RD DEFENDANT/RESPONDENT**

**FRANCIS GITONGA.....4TH DEFENDANT/RESPONDENT**

**RULING**

1. This application is dated 23/11/2016 and seeks orders:-

***(1) THAT this application be certified urgent and the same be heard exparte in the 1st instance.***

***(2) THAT this Honourable Court be pleased to issue an order of temporary injunction restraining the defendants jointly and severally from carrying out any further excavations, quarrying, cultivation, constructions, fencing, digging, depositing building material (s), selling, and/or otherwise howsoever interfering with land parcel No. 7918/558 Isiolo Town until this suit is heard and determined.***

***(3) THAT this Honourable Court be pleased to issue an order of temporary injunction restraining the defendants jointly and severally from carrying out any further excavations, quarrying, cultivation, constructions, fencing, digging, depositing building material, selling and/or otherwise however interfering with land parcel No. 7918/558 Isiolo Town until this suit is heard and determined.***

***(4) THAT the orders issued herein be served upon the O.C.S Isiolo Police Station and/or the enforcement officer, Isiolo County Government and/or Enforcement Officer Isiolo County Government to ensure compliance.***

***(5) That this Honourable Court be pleased to set aside the consent dated 11th November, 2015 and all the consequent orders thereto and reinstate Isaiah Kobia as the 2nd Defendant in this suit.***

***(6) THAT the plaintiff be granted leave to amend the plaint in terms of the draft amended***

**plaint.**

**(7) THAT the costs of this application be provided for:**

2. It is supported by the affidavit of MUTUMA ANGAINE, the Plaintiff's director and has the following grounds:-

**i. That the Plaintiff is the owner of land parcel No. 7918/5581 Isiolo Town measuring approximately 2:00 Ha pursuant to Grant No. I.R.N. 4771 that was made/issued under the Registration of Titles Act, Cap 281 (repealed) .**

**ii. That the Plaintiff 's interest is leasehold of 99 effective from 01st May, 1991 which interest is still subsisting.**

**iii. The Plaintiff has been in exclusive user, possession, occupation, development and enjoyment of the said land for a period of excess of 20 years.**

**iv. The Defendants have illegally unlawfully and/or wrongfully invaded the plaintiff's said land and started quarrying, excavations and constructing structures without the plaintiff's consent and/or authority.**

**v. The plaintiff's demands for the defendants to stop the said actions have been met with hostility as the defendants have threatened the Plaintiff's agents with violence.**

**vi. The Plaintiff has reported the said actions to the Isiolo Police wherein it has been advised to obtain the relevant orders from Court since there is a pending civil suit (this one) in respect of the suit land.**

**vii. The consent dated 11th November, 2015 was entered by mistake, error and/ or irregularly hence the same ought to be set aside together with all the consequential orders thereto.**

**viii. There is need to amend the plaint in order to bring out the real issues in controversy besides correcting the errors that are on the plaint.**

**ix. That it is the interest of justice and fairness that this application be allowed.**

3. The application was fixed for interpartes hearing on 07/12/2016.

4. Mr Ogoti, holding brief for Mr. Kaume for the 2nd Defendant, told the Court that Mr. Kaume sought an adjournment for the application to be heard at another time, hour or date.

5. Mr. Mutegi, holding brief for Mr. Nyenyire , for the Plaintiff/Applicant told the Court that all the respondents had been properly served with a notice indicating that the application was to be heard on 07/12/2016.

6. Mr Mutegi told the Court that he was ready to prosecute the application.

7. I find that the respondents had been served with a notice indicating that this application was to be heard interpartes on 07/12/2016. No reason has been proffered to the satisfaction of the Court that the intepartes hearing of the application should not proceed. Mr. Mutegi was allowed to prosecute the application .

8. Mr. Mutegi told the Court that the applicant was seeking an order of temporary injunction against the Defendants pending hearing and determination of the suit.

9. He told the Court that the Defendants had invaded the suitland even though it was clear that the land belonged to the applicant.

10. Mr. Mutegi told the Court that he was relying on the grounds on the face of the Notice of Motion, Annexures and the apposite affidavit . He asked the Court to grant prayers 3,4,5 and 6.

11. Upon consideration of the Submissions made by Mr. Mutegi and upon perusal of apposite proceedings, I find that the application is meritorious.

12. The application is deemed heard and concluded.

13. I grant orders in terms of prayers 3,4,5 and 6

14. Costs shall be in the cause.

15. It is so ordered.

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

C.A. Daniel/James

Kaimba h/b Ngunjiri for Plaintiff/Applicant

1st and 3rd defendants absent.

**P.M. NJORGE**

**JUDGE**