



**REPUBLIC OF KENYA**

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

**E& L CASE NO. 235 OF 2016**

**FRANCIS MWITI WANDERI .....PLAINTIFF**

**VERSUS**

**M'MBIJIWE M'TWAMWARI .....1ST DEFENDANT**

**DAVID MUTUMA MUGAMBI.....2ND DEFENDANT**

**R U L I N G**

1.This application is dated 16th November, 2016 and seeks orders:-

1. ***THAT this application be certified urgent and be heard on priority basis and ex parte in the first instance.***

2. ***THAT the Honourable Court be pleased to issue an order of an interlocutory injunction to restrain the Defendants whether by themselves, their family members, agents, servants, representatives, employees, and/or anybody else acting or claiming on their behalf from trespassing, depositing building stones, constructing any structures, dealing, cultivating and fencing or in any way interfering with the Plaintiff's peaceful use and enjoyment of land parcel number 4886 at RUIRI/RWARERA Adjudication Section within BUURI District in any manner whatsoever pending the hearing and determination of this application inter partes.***

3. ***THAT a copy of the Court Order issued in terms of prayer number (2) herein above under the seal of this Honourable Court be served upon the Officer Commanding Police Station (O.C.S) KIIRUA Police Station to enforce its compliance.***

4. ***That the Honourable Court be pleased to issue an order of an interlocutory injunction to restrain the Defendants whether by themselves, their family members, agents, servants, representatives, employees, and/or anybody else acting or claiming on their behalf from trespassing , depositing building stones, constructing any structures, dealing, cultivating and fencing or in any way interfering with the Plaintiff's peaceful use and enjoyment of land parcel number 4886 at RUIRI/RWARERA Adjudication Section within BUURI District in any manner whatsoever pending the hearing and determination of this suit.***

5. ***THAT the costs of this application be borne by the Defendants/Respondents.***

2. The application is supported by the affidavit of FRANCIS MWITI WANDERI and has the following grounds:-

1. ***THAT the Plaintiff is the recorded owner and proprietor of land parcel number 4886 at***

***RUIRI/RWARERA Adjudication Section within BUURI District.***

***2. THAT by a letter dated 10th November, 2016 the District Land Adjudication & Settlement Officer Buuri District granted the Plaintiff consent to file this suit.***

***3. THAT the Defendants have intentionally, illegally and without any colour of right whatsoever trespassed onto the Plaintiff's land parcel 4886 at RUIRI/RWARERA Adjudication Section within BUURI District deposited some building stones, constructed some semi-permanent structures, commenced cultivation and fencing.***

***4. THAT Defendant's said intentional and illegal activities can be verified by this Honourable Court visiting the suit property.***

***5. THAT despite the Plaintiff's numerous attempts, pleas and intervention by the local administration requiring the Defendants to cease their illegal acts they have defied the same and threatened the Plaintiff with acts of violence.***

***6. THAT the Defendants and/or any other person have no legal right on the suit property and the Defendants are not entitled to interfere with the Plaintiff's peaceful use and enjoyment of the said parcel of land.***

***7. THAT the Plaintiff attaches profound sentimental and economic value into his said land.***

***8. THAT the Plaintiff has a good prima facie case with a high probability of success.***

***9. THAT the Plaintiff has reasonable fear that he shall be greatly prejudiced and imminently shall suffer irreparable loss and damage that is incapable of recompense in damages and this suit will be rendered nugatory if this application is not allowed.***

***10. THAT the Plaintiff's claim is for injunctive reliefs against the Defendants herein.***

***11. THAT it's only fair and just that this application be allowed until this matter is heard and determined.***

3. During interpartes hearing on 07/12/2016, the Defendants denied that they had moved into Parcel No. 4886 RUIRI/RWARERA ADJUDICATION SECTION within BUURI District.

4. As the Defendants had not filed Replying Affidavits or grounds of opposition, Advocate Muthomi for the Plaintiff, told the Court that the application should be allowed.

5. I do note that vide a letter dated 6th October, 2016, the District Land Adjudication and Settlement Officer, has confirmed that parcel NO. 4886 RUIRI/RWARERA Adjudication Section is recorded in the name of Francis Mwiti Wanderi .

6. I find that the application is meritorious.

7. Prayers 3 and 4 are granted and the O.C.S Kiirua Police Station is ordered to enforce compliance of order 4.

8. Consequences of disobedience of Court orders in terms of Section 29 of the ELC Act have been brought to the attention of the Defendants.

9. Costs shall be in the cause.

10. It is so ordered.

**DELIVERED IN OPEN COURT AT MERU THIS 7TH DAY OF DECEMBER, 2016 IN THE PRESENCE OF:-**

C.A Daniel /James

Muthomi for Plaintiff/Applicant

Joseph M' Mbiyiwe alias M'Mbiyiwe M'Twamwari – 1st Defendant

David Mugambi M' Mbiyiwe alias

David Mutuma M'Mbiyiwe -2nd Defendant.

**P.M NJOROGE**

**JUDGE**