



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENT AND LAND COURT
ELC CASE NO. 819 OF 2016

BENJAMIN KYALO MWOLOLO.....PLAINTIFF/APPLICANT

-VERSUS-

JAMES MATHEKA KING'EI.....1ST DEFENDANT/RESPONDENT

GEOFFREY MUI MULEELO.....2ND DEFENDANT/RESPONDENT

MIRIAM MWEUINTENDED 4RD DEFENDANT

DIRECTIONS.

On **27th October 2016**, the Court recorded **Consent** between the Plaintiff herein and the Defendants wherein it was consented that the Defendants jointly and severally cease any activity on the suit property and vacate the same together with the cattle that had been taken there.

Thereafter on **2nd November 2016**, the Firm Law of **Mutembei Chabari & Co. Advocates** filed an application dated **1st November 2016**, seeking for joinder of **Miriam Mweu** as a 3rd Defendant and stay of execution of the orders issued on **27th October 2016**.

The intended 3rd Defendant filed a further Notice Motion application on **5th November 2016**, seeking for restraining orders against the Plaintiff. On **29th November 2016**, **Mr Mwenesi** for the intended 3rd Defendant sought for temporary injunction in terms of **prayer no.2** for the Notice of Motion dated **15th November 2016**. The same was opposed by **Mr Nzavi** for the Plaintiff.

I have perused the court record. There is indeed a Consent Order entered on **27th October 2016**. The intended 3rd Defendant has sought for setting aside of the said orders. The intended 3rd Defendant is not yet a party to this suit. I have taken into consideration the principles of setting aside consent orders or judgement which are similar to setting aside of a contract. There is a valid court order issued by the court through consent. The court cannot issue restraining order against the Plaintiff over the same suit without having heard the parties. That would mean issuing two conflicting orders over the same suit property in the same case. That would not augur well for the institution of the court and would even embarrass the Court.

The best option herein is for the parties to ensure that the two instant applications are prosecuted expeditiously so that the court can issue an informed decision and order.

For that reason, the court declines to issue any temporary injunction . The two applications to be set down for hearing forthwith.

L GACHERU

JUDGE

2/12/2016

Before Hon.L Gacheru Judge

Court Clerk : Vincent

M/s Wamuyu holding brief for *Mr Nzavi* for the Plaintiff/Respondent

None attendance for the intended applicant

None attendance for the Defendants

Court:

Directions read in open Court

L.GACHERU

JUDGE

2/12/2016