



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**CIVIL SUIT NO. 153 OF 2012 (O.S)**

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP 22 SECTION 7, 9(1), 37 AND 38

AND

IN THE MATTER OF LAND REGISTRATION ACT, NO. 3 OF 2012

AND

IN THE MATTER OF LAND CONTROL ACT CAP 302

AND

IN THE MATTER OF AN APPLICATION BY LEONARD KIMEU MWANTHI UNDER THE  
LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA THAT HE BE REGISTERED AS  
PROPRIETOR OF LAND PARCEL NOS. NYAKI/KITHOKA/657 AND 658 MEASURING  
APPROXIMATELY 0.32 Ha. RESPECTIVELY OR THEREABOUT

AND

FOR A DECLARATION TO THE LAND REGISTRAR UNDER SECTION 28 OF THE LAND  
REGISTRATION ACT, NO.3 OF 2012 TO REGISTER THE APPLICANTS AS THE PROPRIETOR  
OF LAND PARCEL NOS. NYAKI/KITHOKA/657 AND 658 MEASURING APPROXIMATELY 0.32  
HA

AND

0.36 HA RESPECTIVELY OR THEREABOUTS.

LENARD KIMEU MWANTHI.....PLAINTIFF/APPLICANT

VERSUS

PATRICK KIRIMI THEOPHILUS.....1ST DEFENDANT/RESPONDENT

MARY KARAI MITONGA.....2ND DEFENDANT/RESPONDENT

THE PUBLIC TRUSTEE OF KENYA.....3RD DEFENDANT/RESPONDENT

**RULING**

This application is dated 21 October, 2015 and seeks orders:

1. *That this application be certified as very urgent and the same be heard on priority basis in the first instance by dispensing with service.*
2. *That pending the inter-partes hearing of the application the honourable court be pleased to issue an order of temporary injunction restraining the 1st defendant, his workers, agents, servants, contractors or anybody else acting at his behest, direction, contract or employment from:*
  - a) *Carrying out any construction or introducing any new type of buildings, soil excavation, structure of any kind whatsoever or depositing any form of building material on the disputed parcels of land Nos. Nyaki/Kithoka/657 & 658 starting from now until hearing and determination of this suit or until further court orders.*
  - b) *Cutting down, uprooting, trimming, pruning or interfering with the griveria trees and napier grass growing on the disputed parcels Nos. Nyaki/Kithoka/657 & 658 and be ordered to preserve on site all the pieces of timber, sawdust and firewood, which he obtained from the griveria trees which he recently felled and split on the suit land until hearing and determination of this suit or until further order of the court.*
  - c) *Alienating, selling, wasting, charging or damaging any part of the disputed parcels of land Nos. Nyaki/Kithoka/657 and 658 until hearing and determination of this suit or issuing of further orders by the court.*
3. *That this honourable court be pleased to grant leave to the applicant/plaintiff herein to amend his originating summons dated 6.8.2012.*
4. *That this honourable court be pleased to exclusively allow the plaintiff to be cutting regularly the nappier grass growing on the road reserve adjacent to parcel No. Nyaki/Kithoka/658 to avoid compromising motorists' views and security.*
5. *That costs of this application be provided for.*

It is buttressed by the affidavit of Leonard Kimeu Mwanthi and has the following grounds:

1. *That the plaintiff is entitled by reason of adverse possession to land parcel L. R. Nos Nyaki/Kithoka/657 and 658 measuring approximately 0.32 Ha and 0.36 Ha. Respectively or thereabout which he was continuously in actual possession and occupation for 25 and 28 years respectively before forcible eviction by 1st Defendant on 3.3.2012.*
2. *That after the forcible eviction of the plaintiff by the 1st Defendant the defendant has continued to prune, fell and split the plaintiff's mature griveria trees and feeding the plaintiff's napier grass to his cattle without the plaintiffs' consent.*
3. *That the 1st defendant has recently started secretly constructing a storey building on parcel Nos. Nyaki/Kithoka/657 in order not only to defeat the course of justice but also systematically destroy the plaintiffs' evidence (houses, trees and napier grass).*
4. *That the 1st defendant has so far not demonstrated that he ever purchased the trees or napier grass referred to above, either from me or the purported seller of the suit lands one John Nyaga and the issue of ownership of the trees and napier grass has to be determined while the evidence exists.*
5. *That the 1st defendant evicted the plaintiff forcibly on 3.3.2012 using over 40 young men and he had not given the plaintiff prior notice as required by law nor did he have a court order which he can claim he was executing and neither did he use a bailiff, meaning he took the law into his own hands alleging he was evicting a trespasser/squatter which I was not.*

6. *That pleadings have already closed and it is necessary that I seek leave of the court to amend my originating summons since I discovered it contained some errors.*
7. *That although I had engaged the services of an advocate in the past my said advocate, M/S Otieno C. & Co. advocates was so seriously compromised by the 1st Defendant that I had been pressing him to amend this originating summons and apply for inhibition/injunction orders since 10.10.2012 but to date he has done nothing hence I was forced to withdraw his services.*
8. *That I have new evidence concerning the defendants and I need to seek leave of court to include it in my pleadings before proceeding to hearing of this suit.*
9. *That it is only fair and just that this application be allowed*

The application was heard inter partes on 3.11.2015. The parties asked the court to rely on their pleadings. The 3rd defendant, the Public Trustee, however, told the Court that it was not opposed to the application as the applicant had, through his wife Lucy Catherine Mwiya Mwanthi, bought the land from the Public trustee through a Public auction.

I do not have to re-invent the wheel. The Court of Appeal in the Case of Mbuthia Versus Jimba Credit Corporation [1988] KLR1 gave erudite guidance and opined as follows:

***“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side's propositions. The lower court judge had gone beyond his proper duties and made final findings of fact on disputed affidavits.”***

I will not delve into disputed facts. Having carefully considered the averments proffered by the parties, I find that the applicants propositions have enough weight to merit the granting of the orders he is seeking. I also note that the 3rd defendant, the Public Trustee, supports the application and does not dispute the assertion that the disputed land was sold by the public trustee, through a public auction, to the applicant's wife.

**In the circumstances, this application is allowed and orders in terms of prayers 2, 3, and 4 are granted.**

**Costs shall be in the cause.**

**It is so ordered.**

**Delivered in Open Court at Meru this 3rd day of November, 2015 in the presence of:**

Cc. Lilian/Daniel

Mutuma h/b E. G. Mwangi for 1st and 2nd Respondents

Leonard Kimeu Mwanthi – Applicant

Mwaniki h/b Malumbo for 3rd Defendant

**P. M. NJOROGE**

**JUDGE**