



**REPUBLIC OF KENYA**

**High Court at Kerugoya**

**Environmental & Land Case 20 of 2012**

**STEPHEN R.G.G. MUNYI ..... PLAINTIFF**  
**VERSUS**  
**THE BOARD OF GOVERNORS**  
**KUTUS SECONDARY SCHOOL ..... DEFENDANT**

**RULING**

The plaintiff/applicant herein filed this suit against the defendant/respondent on 13<sup>th</sup> November 2012 seeking the following remedies:-

(a) A declaration that he is the registered absolute proprietor of land parcels registration numbers:-

- KABARE/NYANGATI/2897
- KABARE/NYANGATI/2895
- KABARE/NYANGATI/2892
- KABARE/NYANGATI/2896
- KABARE/NYANGATI/2902
- KABARE/NYANGATI/2901
- KABARE/NYANGATI/2903
- KABARE/NYANGATI/2898
- KABARE/NYANGATI/2905
- KABARE/NYANGATI/2904 and
- KABARE/NYANGATI/2889

(b) A permanent injunction against the defendant/respondent by itself, its agents from trespassing on, fencing around or otherwise adversely interfering with the plaintiff/applicant's quiet possession of the aforementioned parcels of land.

(c) Any further or better relief that the court may deem fit and just.

(d) Costs of the suit.

Contemporaneously with the filing of the suit, the plaintiff/applicant filed an application seeking an injunction to issue against the defendant/respondent restraining it by itself, its agents and/or servants from trespassing on, fencing around or otherwise adversely interfering with the applicant's quiet possession of the said parcels of land and also a declaration that the plaintiff/applicant is the registered absolute proprietor of the said parcels of land pending the hearing and determination of this suit. It is this application vide a Notice of Motion, which did not indicate the enabling provisions of the law under which it was brought, that is the subject of this ruling.

I must remind the counsels that notwithstanding the liberal provisions of Article 159 of the Constitution, it is a good practice to always cite the legal provisions under which any application is brought.

The application was supported by the affidavits of the plaintiff/applicant herein in which he deponed inter alia, that he is the registered proprietor of all the aforesaid parcels of land and annexed thereto copies of the title deeds of the said parcels adding that when he went to supervise the preparation of the land for planting on 4<sup>th</sup> October 2012, the Principal of Kutus Secondary School and who is also the Secretary to the defendant/respondent alleged that the land belonged to the school.

The application was opposed and by her replying affidavit dated 5<sup>th</sup> December 2012, CHRISTINE NGARI who is the Chairperson of the defendant/respondent deponed, inter alia, that the parcels of land referred to above were all sub-divisions of title No. KABARE/NYANGATI/703 which was originally owned by one MBURIA NGARANGARI (deceased) and was transferred to the plaintiff/applicant and one PETER GACHOKI MBURIA by way of transmission on 13<sup>th</sup> December 1994 and the title deed was issued in their names but was later closed on 3<sup>rd</sup> April 1996 after the new title deeds for KABARE/NYANGATI/2897, 2895, 2892, 2896, 2902, 2901, 2903, 2898, 2905, 2904 and 2889 and which are the dispute properties herein were issued. She further deponed that on or before 1974, the then Kirinyaga County Council acquired land from various individuals by way of exchange and others through compulsory acquisition for purposes of expanding Kutus town and were compensated by land elsewhere and that MBURIA NGARAGARI was one such individual whose parcel No. KABARE/NYANGATI/703 was acquired and he was allocated land in Marurumo being MWEA/MARURUMO/165 and that KABARE/NYANGATI/703 was allocated to the defendant/respondent and that infact the letter allocating KABARE/NYANGATI/703 to the defendant /respondent was signed by the applicant who was then a clerk at the Kirinyaga Council. Copies of the said letters dated 2<sup>nd</sup> February 1983 together with extracts of the resolution of the Kerugoya/Kutus Urban Council were annexed to the affidavit. That since then, the defendant/respondent has been in occupation of the dispute land.

However, in a supplementary affidavit, the plaintiff/applicant has denied that the late MBURIA NGARAGARI was ever given land at Marurumo in exchange of KABARE/NYANGATI/703 or that the defendant/respondent was allocated that parcel of land.

Submissions have been made by counsels for both sides and I have considered them together with the parties' affidavits and other documents.

This being an application for a temporary injunction, the plaintiff/applicant must demonstrate that:-

- (a) ***He has a prima facie case with a probability of success and***
- (b) ***That he would suffer irreparable injury which is un-compensable in damages and***
- (c) ***If the court is in doubt, it will decide the case on a balance of convenience – GIELLA***

**VS CASSMAN BROWN & CO. LTD 1973 E.A 358.**

The dispute property is registered in the names of the plaintiff/applicant and titles issued under the then **Registered Land Act (chapter 300).**

should remain and that none of the parties should do any other developments on the same or change it's ownership until this suit is heard and determined. Orders accordingly.

B.N. OLAO

JUDGE  
29/4/2013

29/4/2013

Before B.N. OLAO – JUDGE  
CC – Muriithi

Ms Kiragu for Plaintiff/Applicant – present

Mr. Wainaina for Defendant/Respondent – absent

COURT: Ruling delivered this 29/4/2013 in open Court.

Ms. Kiragu for plaintiff/applicant present

Mr. Wainaina for defendant/respondent absent

B.N. OLAO

JUDGE

29/4/2013