**Mmboroki v The Chief Conservator of Forests and Minister for Environment**

**and Natural Resources**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 15 March 2006

**Case Number:** 27/06

**Before:** Nyamu J

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Land law – Challenge to indefeasibility of title – Public resource – Alienation of natural resources –*

*Public interest over registered land – When to issue conservatory orders.*

**Editor’s Summary**

The applicant sought a conservatory order to prohibit the first and the second respondents to refrain from

Re-establishing the intended boundary of Lower Imenti Forest or dealing in any manner whatsoever that would affect the applicant’s proprietary rights. The reasons were that the respondent was trying to re-establish the boundary of Lower Imenti Forest and the intended re-establishment would excise 0.32 hectare of the applicant’s land. The respondents however contended that it is the applicant who had encroached on the forest.

**Held** – The mere fact that section 28 of the RLA, Chapter 300 gives a proprietor an indefeasible title does not on a *prima facie* basis give him a title that is beyond any challenge including a constitutional challenge. That land which is part of a public resource has been acquired can form a ground of challenge to a first registration. The government cannot alienate natural resources without invoking the constitutional procedure and any such alienation as permitted can only be for a public benefit. The government holds public resources including forests for the people generally and therefore, there is a public trust in respect of all such resources. A public trust defeats the defence of an indefeasible title because it is in the public interest that such resources including forest land are held in trust. This assumes even greater importance in a matter involving an issue of environmental law. (*Kenya Guards and Allied Workers Union v Security Guards Services and others* miscellaneous application number 1159 of 2003 (UR) applied). Issuing a conservatory order in the nature of an injunction would not have been proper in this case, especially taking into account the wider interests of the other members of the community. There would have been greater harm in halting the community project. Moreover it was the community which was fencing and they were not party to these proceedings. If it was found that the respondents had encroached, the applicant could be compensated by damages.

Application dismissed.

**Case referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Kenya Guards and Allied Workers Union v Security Guar*