



REPUBLIC OF KENYA



**Kateto & another v Mosiany (Environment & Land Case E009 of 2022)
[2023] KEELC 20902 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20902 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E009 OF 2022
LC KOMINGOI, J
OCTOBER 19, 2023**

BETWEEN

EDWARD TIPAPE KATETO 1ST APPLICANT

EMMANUEL KATORIA KATETO 2ND APPLICANT

AND

KAAKAI ENE NANKOO MOSIANY RESPONDENT

RULING

1. This is the Notice of Motion dated 13th July 2023 brought under;

Under Section 1A, 1B, & 3A of the [Civil Procedure Act](#), Order 40 of the [Civil Procedure Rules](#) and all enabling Provisions of Law
2. It seeks Orders;
 1. Spent.
 2. Spent.
 3. That an order of injunction do issue directed at the Respondent whether by herself, or through her servants, agents or employees restraining them from entering the suit property or premises on parcel of land Title No. Kajiado/Dalalekutuk/3134 or interfering with the quiet possession and enjoyment of the parcel of land by the Applicants pending the hearing and determination of the suit herein.
 4. That costs of this application be provided for.
 5. That this Honourable Court do issue any other order as it may deem fit.



3. The grounds are on the face of the application and are set out in paragraphs 1 to 9.
4. The Application is supported by the affidavit of Edward Tipape Kateto and Emmanuel Katoria Kateto the Applicants herein sworn on the 13th July 2023.
5. The Application is opposed. There is a Replying Affidavit sworn by Kaakai ene Nankoo Mosiany, the Respondent herein on the 26th June 2023.
6. The Notice of Motion was canvassed by oral submissions. In their submissions counsel substantiated their clients' respective positions stated on the respective affidavits. It is now appropriate to consider the facts That have emerged and the legal principles applicable.
7. The principles were set down in the precedent setting case of *Giella v Cassmasman Brown & Co. Ltd*(1973) EA 358. In the case of *Mrao Ltd v First American Bank Ltd & 2 Others* (2003) KLR 125 the Court of Appeal stated what amounts to a *prima facie* case.
8. In paragraph 5, of her Replying Affidavit the Respondent states;

“That in the preliminary, I state That the contents in paragraph 9 to 13 of the Supporting Affidavit have substantially been overtaken by events considering That on 25th July 2023, pursuant to Boundary Dispute summons marked as their Supporting Affidavit’s annexure ETK – 1, the Kajiado Assistant County Commissioner, Sajiloni Area Chief, and Sajiloni Area Assistant Chief, registered owners and representatives of Kajiado/ Dalalekutu/3131,3132,3134,3135,3136,3142,3143 and 3144 attended to the ground for a boundary determination exercise. (Annexed hereto and marked KENM-1 a copy of the list of persons in attendance)”.
9. The above averments have not been rebutted by the Applicants in any way.
10. I agree with counsel for the Respondents That the originating summons ought to be expedited without any further delay.
11. I find no merit in this application and the same is dismissed with costs to the Respondent.

SIGNED, DATED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OCTOBER 2023.

L. KOMINGOI

JUDGE

