

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

ELC CASE NO.156 OF 2014

KAWANGWARE GREEN HARAMBEE GROUP.....PLAINTIFF/APPLICANT

VERSUS

KIPAREN OLE KURARU.....1ST DEFENDANT/RESPONDENT

WILLIAM SEIKURU.....2ND DEFENDANT/RESPONDENT

JOSEPH KIPAREN.....3RD DEFENDANT/RESPONDENT

R U L I N G

1. The Plaintiff lodged **Plaint** dated **6.11.2014** on 6.11.2014 seeking injunctive reliefs against Defendants/Respondents. Along with **Plaint** the Applicant filed Notice of Motion dated 6.11.2014 seeking injunctive reliefs against respondents to enable the marking of boundaries and placing of beacons on the suit land pending hearing and determination of the suit. The motion is based on the grounds on the motion and is supported by the affidavit of Veronica Mukami Chairlady of the Plaintiff/Applicant. The 1st Respondent has filed replying affidavit to oppose the motion sworn on the 18.11.2014.
2. The Applicant avers that it is the owner of the subject matter and that it has engaged the surveyor to carry out survey and establish boundaries over the suit land. However, the Defendants without any legal justification have harmed and/or threatened further harm to Plaintiff members and/or agents during the exercise of boundary marking and thus need for security to oversee the exercise.
3. The subject matter was sold to the Plaintiff by the 1st Defendant and the Plaintiff is the registered owner and has attached a copy of the certificate of title. All the processes including sub-division and procurement of requisite consent was undertaken and facilitated by the 1st Defendant. On 6.2.1992 the Plaintiff obtained consent to sub-divide land to its members. However, in May, 2013 the Defendants chased surveyor appointed by the Applicant from the suit land.
4. The Defendants have since then obstructed the Plaintiff from access to suit land. Various efforts by the Applicant to use local Administration has not born fruits. The Respondents have threatened harm and this is the reason orders are sought to enable police to supervise the exercise.
5. The 1st Respondent avers that he sold the suit land at KShs.400,000/- but KShs.200,000/- is yet to be paid. He alleges to have given the Plaintiff original title deed to effect sub-division but instead Plaintiff disappeared with the same. He denies signing the transfer documents and insists that he is still owed KShs.200,000/-. He avers that the ownership should be determined of the suit property before boundaries are fixed. The Defendants are yet to file defence to enable the court appreciate the shape the suit is going to take.
6. The court observed that the sale was effected in 1985 and the title deed issued on 29.4.1985. The 1st Defendant has never sought to impugn the title of the suit land nor has he reported to the police over the alleged fraud. The certificate of the title attached is under Section 26 of Land Registration Act 2012 *prima facie* evidence of the ownership. The court finds no justification by the Defendants to use raw and

brutal force in preventing the Applicant access to the suit land. If the Defendants have any claim to suit land, they should use the legal mode of vindicating their rights not the jungle law.

7. The court thus finds that the motion has merits and makes the following orders:

1. The Respondents are restrained either by themselves, servants or agents from interfering with exercise to mark boundaries and placing beacons on Kajiado/Ntashart/462 in a date to be fixed.
2. The OCS Ngong Police Station to provide security during the exercise (1) above.
3. Costs to the Applicant.

Signed and Delivered at Machakos, this 16th day of January, 2015.

CHARLES KARIUKI

JUDGE