



COPY

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 248 OF 2012

CHAKA NYAMAKII.....PLAINTIFF

- V E R S U S -

1. KONDO MWERO MATSO

2. ZAWADI KONDO MWERO DEFENDANTS

RULING

[1] The Applicant by a notice of motion dated 2nd November 2012 filed an application for an interim injunction restraining the defendants, their employees, servants and/or agents from entering into, cultivating or committing acts of waste or dealing in any manner with the plaintiff's quiet and peaceful enjoyment of land known as **sub-plot Q measuring 0.45 ha** at Samburu Trading Centre.

[2] The application was opposed by the defendants who argued that the entire Samburu area consists of community land which is Trust Land. The defendant argued that no individual has the capacity or right to alienate, dispose off, sell or adversely deal with any portion of community land without the consent of clan elders. They denied that the plaintiff has ever constructed a wall or placed beacons over the suit land and averred the land belongs to Samburu South/Makamini Group Ranch.

[3] For an injunction to be granted the court must be satisfied that the plaintiff has a *prima facie* case with a probability of success. It is admitted that Plot Q is not registered in any one's name, its ownership would have to be established by evidence at the hearing hereof.

[4] The other cardinal rule of injunction is that they will normally not be granted unless the applicant can show that he will suffer irreparable injury that will not be capable of being remedied by damages. This has not been established before me at all. Looking at this application on the whole and having perused the documents annexed therein. I am not convinced that any case has been made out for an injunction.

I dismiss the appeal with costs.

Dated and delivered at Mombasa in open court on the 14th day of

February, 2014.

S.MUKUNYA

JUDGE

14.2.2014

In the presence of:

Odiaga Advocate for applicant

Mutubia Advocate for 1st and 2nd Respondent.