



REPUBLIC OF KENYA

High Court of Kisii

Civil Case 510 of 2012

ISAAC MAKAYE BIGORO.....1ST PLAINTIFF

GEORGE OYUGI SAROTA.....2ND PLAINTIFF

JAMES KONIGA TORORI.....3RD PLAINTIFF

VERSUS

LEONARD KIPNGETICH LANGAT.....1ST DEFENDANT

KIPLINY ROTICH.....2ND DEFENDANT

KIPKORIR METEI.....3RD DEFENDANT

OBOTE TAITA.....4TH DEFENDANT

KIPKURUI MOSOIN LANGAT.....5TH DEFENDANT

JOSHUA RUTO MAGUT.....6TH DEFENDANT

DAVID CHEPKWONY.....7TH DEFENDANT

KIPKENTO ROTICH.....	8 TH DEFENDANT
JOSEPH KIMELI KIPOKOS.....	9 TH DEFENDANT
SHEIK KOSKEI.....	10 TH DEFENDANT
JOHANA ROTICH.....	11 TH DEFENDANT
JOSEPH LANGAT.....	12 TH DEFENDANT
FRANCIS LANGAT.....	13 TH DEFENDANT
TABAIMET ROTICH.....	14 TH DEFENDANT
ELIJAH MARITIM.....	15 TH DEFENDANT
SIGILAH KISGEIRUTOH.....	16 TH DEFENDANT

RULING

1. The plaintiffs are the chairman, Secretary and Treasurer respectively of **RIOBANO NYAKWERIGERIA GROUP** a community based organization based at Masige East Location, Nyamache Division within Kisii County. **RIOBANO NYAKWERIGERIA GROUP** (hereinafter referred to only as “**the group**”) is the registered proprietor of all the parcel of land known as TRANSMARA/MOYOI/9 (hereinafter referred to only as “**the suit property**”) which is situated within Transmara District in Narok County. The plaintiffs have brought this suit against the defendants seeking an order of eviction and a permanent injunction restraining the defendants from re-entering the suit property once evicted. Together with the

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plaint, the plaintiffs filed an application by way of notice of motion under certificate of urgency seeking interlocutory injunction to restrain the defendants from trespassing on, constructing on, farming on, meddling with and/or in any other manner howsoever interfering with the plaintiff’s ownership of the suit property and the District surveyor Transmara while carrying out a survey of the suit property pending the hearing and determination of this suit.

2. The plaintiffs’ application was certified as urgent on 8th November, 2012 and the plaintiffs were directed to serve the same upon the defendants with the same and for the matter to be mentioned on 22nd

November, 2012 for further directions. When the matter came up for mention on 22nd November, 2012 the same was listed for hearing on 17th December, 2012. Since the defendants did not appear, the court directed that the defendants be served with a hearing notice. On 17th December, 2012 only the plaintiff's advocate appeared in court and after satisfying myself from the affidavit of service sworn by one Maswari Mogire George on 14th December, 2012 that the defendants were duly served with the application and the hearing notice, I allowed the plaintiff's advocate to argue the application in the absence of the defendants. The plaintiffs' application which is dated 8th November, 2012 is supported by the affidavit sworn by the plaintiffs' jointly. The plaintiffs case against the defendants as pleaded in the plaint and the affidavit in support of the application ("**supporting affidavit**") is that the defendants who had obtained illegal titles with respect to the suit property which titles were cancelled by the District Land Registrar, Transmara District have trespassed into the suit property and commenced farming activities thereon. They have also prevented the plaintiffs and the District Land Surveyor, Transmara District from carrying out a survey over the suit property. The plaintiffs as registered proprietors are therefore entitled to possession of the suit property and an injunction restraining the defendants who are trespassers from re-entering the same once evicted by an order of this court. In the meantime, the plaintiffs want the defendants restrained from having any dealing with the suit property and from interfering with the survey of the property pending the hearing of the suit. The plaintiffs have annexed to the supporting affidavit a copy of their certificate of registration by the Ministry of Gender, Children and Social Development, a copy of their title deed for the suit property, a copy of a letter from the Chief Land Registrar asking the District Land Registrar to gazette for cancellation the parcels of land that had overlapped the suit property, a copy of the Gazette Notice No. 7809 dated 11th November, 2003 that was published in the Kenya Gazette of the same date cancelling a number of titles in Transmara/Angata-Barkoi area that were said to have overlapped the suit property, a copy of a letter dated 20th February, 2012 by the District Surveyor-Transmara requesting the District Officer, Lolgorian division to accompany him to the suit property for the purposes of re-establishing the boundary of the suit property and the Angata-Barkoi Scheme and a receipt for Sh. 20,000.00 issued to the group for the survey fees paid.

3. In his submission in support of the plaintiffs' application, the plaintiff's advocate submitted that the plaintiffs have a constitutional right to own land and to live in any part of Kenya. Counsel submitted that the plaintiffs have proved that the group is the registered proprietor of the suit property and that the defendants have no interest in the suit property recognized by law. Counsel submitted that the plaintiffs should be allowed to proceed with the survey of the suit property as some of the members of the group have obtained bank loans and would wish to commence development. Counsel submitted further that the defendants who are mere trespassers on the suit property should be restrained from any further trespass. Counsel submitted that the plaintiffs would suffer irreparable harm unless the orders sought are granted.

4. The principles for granting an interlocutory injunction are now well settled. The plaintiffs herein are not excused from satisfying the said principles simply because the application is not defended. As was stated in the case of **Giella –vs- Cassman Brown & Company Ltd. [1975] E.A. 358**, an applicant for the interlocutory injunction must prove that he has a prima facie case against the defendant with a probability of success and that unless the orders sought are granted, he will suffer irreparable harm. If the court is in doubt, the court will determine the application on a balance of convenience. The plaintiffs have placed material before the court which shows that their group is the registered proprietor of the suit property. The plaintiffs have also sworn an oath that the defendants have trespassed on the suit property and have prevented the plaintiffs from carrying out a survey on the suit property to re-establish the boundary of the suit property after some of the titles that had overlapped on the same were cancelled. In the absence of any challenge to the plaintiffs' group title and the plaintiffs' claim that the defendants have trespassed on the suit property, I am persuaded that the plaintiffs have established a prima facie case with a probability of success against the defendants since the plaintiffs are the registered proprietors of the suit property and are entitled to possession of the same. I am also satisfied that the plaintiffs would suffer irreparable loss if the orders sought are not granted as that would result in the plaintiffs being kept away from their property. Due to the foregoing, the plaintiffs have satisfied the principles for granting interlocutory injunction. The plaintiffs' application dated 8th November, 2012 is therefore granted in terms of prayer No. 3 thereof. For the avoidance of doubt, this is not an eviction order and the same

should not be used to evict any of the defendants from the suit property in the event that any of the defendants are residing on or have structures on the suit property. The OCS- Lolgorian Police Station shall assist the plaintiffs in ensuring that peace and order is maintained while the plaintiffs are carrying out a survey on the suit property. The plaintiffs shall have the costs of this application.

Dated, signed and delivered at **KISII** this 21st day of January 2013

**S. OKONG'O,
JUDGE.**

In the presence of:-

Mr. Ochwangi for plaintiffs

N/A for defendants

Mobisa Court Clerk.

**S. OKONG'O,
JUDGE.**