



REPUBLIC OF KENYA

High Court at Nakuru

Civil Suit 257 of 2012

WILSON TANUI BARNO.....1ST APPLICANT/PLAINTIFF

STANLEY KINGA MWENDIA.....2ND APPLICANT/PLAINTIFF

ENOCK KIPRUTO SALBEI.....3RD APPLICANT/PLAINTIFF

VERSUS

JENIFFER KOSITANY.....RESPONDENT/DEFENDANT

RULING

The applicants have deposed that they are the joint registered owners of L.R. No.13287/45 (the suit property) measuring approximately 10.47 hectares. They have further alleged that the respondent, a daughter of the former President has without colour of right forcibly entered the suit property and embarked on acts of wanton wastage, using administration police officers.

The applicants have instituted this action for a declaration that they are the absolute registered owners of the suit property; for a permanent injunction against the respondent and for her eviction from the suit property.

In the meantime, the applicants seek in the instant motion that the respondent be restrained by an order of temporary injunction from:

“.....disposing off, alienating, further trespassing onto, occupying, cultivating, grazing, interfering with and/or in any manner dealing with the suit land.....”

From two affidavits of service filed on 31st August, 2012 and 5th November, 2012, I am satisfied that the respondent was served with both the application and the *interpartes* hearing notice, but failed to respond to the application or attend the court on the date the application was scheduled to be heard. That being so, the matters proceeded *exparte*.

The applicants have been able to demonstrate at this stage that *prima facie*, they are the registered owners of the suit property by exhibiting a copy of certificate of title showing that the property was transferred to them in 1995 by the previous proprietor, Dr. Laban Kiptui.

The respondent having failed to controvert these allegations, it follows that the applicants have a *prima facie* case with a probability of success. The question of adequacy of damages does not arise as the respondent has not laid any claim to the suit property.

For these reasons, there will be a temporary restraining orders in terms of paragraph 3 of the Notice of Motion pending the determination of this suit.

Costs to the applicants.

Dated and Signed at Nakuru this 18th day of January, 2013.

**W. OUKO
JUDGE**

Dated, Signed and Delivered at Nakuru this 5th day of February, 2013 by Hon. Justice M. J. Anyara Emukule.

JUDGE