



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL SUIT NO. 57 OF 2011**

**GATATHA FARMERS CO. LTD.....PLAINTIFF**

**VERSUS**

**OTIENO OKIRO ..... 1ST DEFENDANT**

**PASCAL NYONGESA ..... 2ND DEFENDANT**

**SIMON MUSOYO SIMATWA ..... 3RD DEFENDANT**

**R U L I N G**

By Notice of Motion dated 20th March 2013, the Applicant prayed that it be enjoined as an interested party in this suit. It also prayed for injunctive orders restraining the Respondent from utilizing more than 6 acres out of Land Reference No. 5710 situated out on the West of Kitale Township in Trans-Nzoia District. The Applicant contends that it purchased the suit property among others from Gatatha Farmers Company Limited. The Applicant contends that the Respondent's parents had been given a life interest in 6 acres of the suit land. The Applicant now contends that the interest determined on the demise of the Respondent's father and the Respondent's insistence on ploughing 36 acres of the suit land has no basis and is infringing on its right to property.

The application has been opposed by the Respondent who contends that he has always been occupying and cultivating 36 acres out of Land Reference Number 5710/2. He contends that Title No. 5710 does not exist.

I have considered the application as well as the objection to the same by the Respondent. There is no contention that the interested party has bought all the land which used to be owned by Gatatha Farmers Company Limited. The land which is subject of the suit herein is part of the land which the Applicant bought. There is therefore no doubt that the Applicant has interest in the land and any orders which will finally be given will affect it. It is therefore imperative that they be joined as a party to this suit. The argument by the Respondent that the Applicant should file a separate suit against him does not hold water. The essence of joinder of parties to already filed suits is to avoid a situation where a multiplicity of suits are filed when all the issues can be determined in one suit.

On the issue of whether injunctive orders can be given, the principles for grant of injunction were well laid down in the case of **Giella Vs Cassman Brown & Co. Limited**. One of the principles is that an Applicant must demonstrate that he has a prima facie case with a probability of success. The other is that if the court is in doubt it will decide the application on a balance of convenience. In the present case, the Applicants are contending that the Respondent is cultivating on LR No. 5710 whereas the Respondent contends that he is cultivating on LR 5710/2. It is therefore not clear on which Land Parcel the Applicant seeks to restrain the Respondent from. It is important to note that the interested party has recently bought the suit land from the plaintiff. It is seeking to be joined as an interested party. In earlier pleadings, the plaintiff had sought to restrain the Respondent from LR No. 5710/2. There is nothing showing that these two plots are one and the same. Injunctive orders have to be given and directed to a specific property. One cannot be enjoined from a property he is not occupying. To do so will amount to giving orders in vain. Courts do not give orders in vain. I therefore find that injunctive orders cannot be granted in the circumstances. I decline to give injunction orders sought. I however grant the prayer allowing the Applicant to be joined as an interested party to the suit. Costs shall be in the cause.

It is so ordered.

**Dated, signed and delivered in Open Court on this 15th day of July, 2013.**

**E. OBAGA**

**JUDGE**

In the presence of Apollo for Kipkenda & Co. Advocates and Defendant who appears in person.

Court Clerk: Joan.

**E. OBAGA**

**JUDGE**

**15/07/2013**