



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO.87 OF 2007**

**PETER NDUNGUNYA OLE SONO & 2 OTHERS ( suing on their own behalf and on behalf of  
OL JORAI COMMUNITY MEMBERS) .....PLAINTIFF  
S**

**VERSUS**

**LANDS LIMITED.....1ST  
DEFENDANT**

**SOLAI RUYOBEI FARM LIMITED .....2ND DEFENDANT**

**RULING**

The Plaintiffs Peter Ole Sono and others, brought the Chamber Summons dated 14th May, 2007 seeking among other orders, a temporary injunction to restrain the defendants by themselves , their servants and/or agents from entering, trespassing, alienating, selling, evicting the plaintiffs from L.R NO. 20229/1 "the suit land" or dealing with the suit land in any manner whatsoever pending the hearing and determination of the suit.

The application is premised on the grounds on the face of the application and is supported by the affidavit of Musuri Ole Ratia sworn on 14th May, 2007 in a representative capacity of the other plaintiffs and members of OL- Jorai community. He deposes that all the plaintiffs have been resident on the suit land for over 40 years: that the suit land was formerly owned by Agricultural Development Corporation (ADC) but the Government and ADC had agreed to settle the plaintiffs on the suit land 1997. What followed was that the Naivasha District officer in 1998 gave consent for survey to be done, survey fees were paid, survey exercise completed in 1998 and ADC even issued allotment letters to some of the plaintiff's members. In the year 2000 the 1<sup>st</sup> respondent issued a notice threatening to evict them from the suit land. This threat is what made the plaintiffs move to court and seek injunctive orders.

The application is opposed.

Beatrice Kosgei the 1st defendant's Corporation secretary swore a replying affidavit on 18th July, 2007 and Anthony Ademba the legal officer ADC swore a supplementary affidavit and annexed correspondence in support of the replying affidavit of Beatrice Kosgei. Beatrice depones that the 1st defendant is not the registered owner of the suit land, the same having been sold and transferred to the 2nd defendant and that the plaintiffs together with their alleged members trespassed onto the suit land, took possession violently, destroyed property and converted the remainder to be their own, forcing the 1st defendants employees to vacate their land. She states that the applicants have no proprietary interest in the suit land having failed to produce any documentary evidence of sale, transfer or proof of consideration paid. She denies that the 1st defendant ever received an application from the plaintiffs seeking allocation of the said parcel of land, no authority was given by the Government to settle the plaintiffs on the suit

land, there was no directive to the surveyors to carry out a survey for purposes of allocating land to the plaintiffs and no payments were collected by the 1st defendant from the plaintiffs.

Anthony deponed that the plaintiffs are guilty of material non disclosure. A case HCCC 3724 OF 1994 was concluded, a mandatory injunction granted and the plaintiffs were to be evicted from the suit land.

Richard Kipkoech Bundotich a director of the 2nd respondent swore a replying affidavit on 28th May, 2007. He deponed that the 2nd respondent is the registered owner of L.R. NO. 20229/1 also known as title number I.R. NO. 67258 having bought the suit land from the 1st respondent. He acknowledged that there are about 174 squatters on their 8000 acres but was categorical that none of the plaintiffs are among those whose interest is being considered by the Provincial Administration and that the Government has since settled all persons who were resident at OL-Jorai ADC farm.

I have considered the application, affidavits sworn in support of each of the rival parties and submissions by the respective counsels.

Although this is an application for temporary injunction, which must meet the strictures enunciated in the famous **Giella V Cassman Brown & Company Limited (1975) EA 358** and later in the **Kenya Commercial Finance Company Limited V Afraha Education Society (2001) 1 EA 8**, I will choose to follow an unusual path which will be clear in a short while.

From the affidavit evidence presented before this court, there is no doubt that the 2<sup>nd</sup> defendant is the registered owner of the suit land. It is also common ground that the plaintiffs are in possession and currently in occupation of the suit land even if they have adduced no evidence to prove ownership. It is also not in doubt that the plaintiffs took possession when Section 30 of the Registered Land Act (now repealed) was in force. The circumstances leading to their possession and occupation of the suit land are unclear and in my humble view should be among issues to be determined at the trial and not at this interlocutory stage.

Under Section 30 (g) of the Registered Land Act Cap 300 (now repealed), the rights of a person in possession or actual occupation of land to which the person is entitled in right only of such possession or occupation are protected.

Many issues have been raised in the affidavits. One of them relates to different categories of squatters who have settled on the suit land. Some are being considered by the defendants and Provincial Administration for settlement while others are not. It is difficult to tell at this stage which category the plaintiffs fall. I have also looked at the order granted on 19<sup>th</sup> January 1996 in HCCC 3724 OF 1994. This order relates to L.R. NO 10242 OL Jorai farm Nakuru and the suit land is L.R NO. 20229/1 OL Jorai Naivasha. The onus was upon the defendants to prove that this is the same land which they failed to do.

The impact of not granting the orders sought or at the very least maintaining the status quo will result in the plaintiffs being evicted from the suit land. Since it is never the intention of any court to evict parties at an interlocutory stage, as stated in **Yego V Tuiya & another 9 (1986) KLR 726** where the Court of Appeal held:-

**“the order of the judge requiring the appellant to deliver up vacant possession of the land exceeded the terms of the respondents’ application, and under the civil procedure Rules order XXXIX Rule 1, this was not a proper thing to do.”**

And also in **Esso (K) Ltd V. Mark Makwata Okiya** civil appeal No. 69 of 1991 where the court of Appeal held:-

**“.....the purpose of Injunction is to maintain status quo.”**

I choose to preserve the suit land, maintain the status quo and not delve into whether the conditions under the **Giella case** have been fulfilled or not.

The subject matter of this suit being land, and given the fact that justice will only be served if all parties in this suit are given a chance to state their case during the hearing, I invoke the inherent powers of this court under Sections 1A ,1B and 3A of the Civil procedure Act 2010 and order that status quo be maintained on the suit land pending the hearing and determination of this suit.

The plaintiff is also directed to set down this suit for hearing within 60 days failure of which the orders granted will lapse.

**Dated, signed and delivered in open court at Nakuru this 14<sup>th</sup> day of August 2013.**

**L N WAITHAKA**

**JUDGE.**

**PRESENT**

Ms Ayuma for the plaintiff

Ms Langat holding brief for Mr Cheptumo for the 1<sup>st</sup> defendant and Mr Kipkemei for the 2<sup>nd</sup> defendant

Stephen Mwangi : Court Clerk

**L N WAITHAKA**

**JUDGE**