



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

CIVIL CASE 357 OF 2011

MUKUYU-INI FARMERS & 168
OTHERS.....APPLICANTS/PLAINTIFFS

VERSUS

SAMUEL MALAKWEN CHUMO & 57
OTHERS.....RESPONDENTS/DEFENDANTS

RULING

The applicants, numbering 168 through the 1st applicant, Mukuyu-ini Farmers purchased CIS/MARA/OLOLUNGA 157 and 198 (suit property) from GEMA Holdings. It was the intention of the applicants to settle on the land upon sub-division. That was done and individual titles issued to members of the 1st applicants. The applicants have brought this action together with the instant application claiming that the respondents, who are 57 in number, members of the defunct ENOOSOKON Group Ranch, and who occupy the neighbouring parcel of land, CIS/MARA/OLOLUNGA 110 (parcels No.110) have trespassed on the suit property.

The applicants seek in this application that the respondents be:

“... restrainedfrom in any way interfering with the plaintiffs’ occupation of their parcels of land known as CIS/MARA/OLOLUNGA 157 and 198 by way of construction, tilling, grazing or remaining thereon pending hearing and determination of this suit.”

It is the applicants’ contention that the respondents’ parcels was found, upon survey to extend to the Mau Forest and hence not available for occupation. The respondents instead extended their occupation to the suit property. The applicants made a reference to the Narok Land Disputes Tribunal, which awarded the property to the applicants. That aggrieved the respondents who filed an appeal to the Appeal Committee which similarly found in favour of the applicants. The respondents once more have appealed to the High Court in Nakuru HCCC 111 of 2001, which has since been dismissed for want of prosecution. The applicants aver further that upon the appeal being dismissed, they were to occupy the suit property after evicting the respondents. That before this could be done, the respondents have been engaged in delaying tactics; that the District Surveyor and the Land Registrar have visited the land and filed a report declaring that the applicants are the lawful owners of the suit property.

In opposing the application, the respondents have deposed that parcel No.110 was the property of Enoosokon Group Ranch. The group ranch was subsequently dissolved after the property was sub-divided and allocated to the members. They argue that their occupation of this property dates back to the early 1970s. After the survey, sub-division and allocation, each member was issued with a title deed. Several years after being issued with title deeds, and settling on the suit land, the applicants, in 2004 began to claim the property on the basis of an award by the Tribunal.

The respondents sought an order of stay of execution which was dismissed, the respondents ordered to be evicted and the police directed to provide security. That order was, however reviewed as it was issued prematurely, the Tribunal having ordered that the properties in question in this dispute to be surveyed to ascertain their relationship and to establish the lawful ownership. According to the respondents, the survey was done accordingly and a report filed to the effect that they are the lawful owners of the suit property.

I have carefully considered these arguments.

For the applicants to succeed in this application, they must demonstrate any one of the following three things:

- i) that they have a *prima facie* case with a probability of success at the trial;
- ii) that they will suffer substantial loss not capable of being compensated by an award of damages if an injunction is not granted;
- iii) that the balance of convenience is in their favour

See **Giella Vs. Cassman Brown and Company Limited** (1973) EA 358.

In considering the first principle, the court is not expected to delve into the merits of the case by making definite findings of either fact or law. That will be for the trial judge. At this stage, it will be sufficient for the applicants to show that the respondents have violated their proprietary rights to warrant the latter to be called upon to rebut the allegation. See **Mrao Limited V. First American Bank of Kenya Limited** (2003) KLR 125

In other words, the applicants must show a *prima facie* case that they are the registered proprietors of the original parcel Nos.157 and 198 (today No.12699 and 13169) and that the respondents have without any lawful justification encroached the said property. The applicants have exhibited copies of 31 title deeds and one copy of a search certificate as well as 16 copies of the green cards yet there are 168 plaintiffs. It is not clear whether the allegation is that the respondents have trespassed on the parcels belonging to 168 applicants or just some of them.

Secondly, the respondents for their part have maintained that they have been in occupation of No.110 for over 30 years and were issued with title deed in 1996 while the applicants only got theirs in 2010. It follows from this that the respondents are and have been on the suit property for a long period of time or conversely that the applicants are not on the suit property.

Thirdly, the question of who between the applicants and the respondents is entitled to the suit property has not been conclusively resolved. The Appeals Committee in its decision of 10th January, 2001 directed the boundaries of the parcels in question to be established by the District Land Registrar and Surveyor. The two have filed two conflicting reports.

Without *prima facie* evidence that indeed the respondents' parcels of land comprised in No.110 have encroached in the suit property and in view of the respondents' firm assertion that they are the lawful registered proprietors of the land they occupy comprised in No.110, an injunction in terms of the prayers in this application would have the effect of evicting the respondents or stopping them from undertaking farming or other activities on what they maintain are their parcels of land before the extent of the disputed

parcels ascertained and determined. This can only be done after a full trial.

In the result, this application fails and is dismissed with costs.

It is deposed that the applicants are advanced in age. Counsel and the parties they represent must commence and finalize within the shortest time possible the pre-trial procedures so that this dispute can be determined on merit expeditiously.

Dated, Signed and Delivered at Nakuru this 18th day of May, 2012.

**W. OUKO
JUDGE**