



**REPUBLIC
OF
KENYA**

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

Civil Case 28 of 2010

PAUL ole

SAOLI(*suing on his own behalf and as an Administrator of*

the estate of the late LEPOSO ole SAOLI).....**PLAINTIFF**

VERSUS

SOITARA ole SAOLI.....**DEFENDANT**

RULING

By a Plaint dated and filed on 3rd February 2010, the Plaintiff/Applicant sought two orders -

(a) an order of eviction to remove the Defendants, his agents and servants from a parcel of land referred to as L.R. No. 60 Olokurto Division, and a permanent injunction restraining the Defendants his agents, his servants and workers from dealing with, interfering with and entering L.R. No. 60 Olokurto Division.

(b) costs of this case be awarded to the plaintiff.

Together with the plaint, the Plaintiff/Applicant also filed a Chamber Summons in which he sought a temporary injunction restraining the Defendant/Respondent from any dealing with the land pending the hearing of the application *inter partes*.

Interim orders were granted by this court on 22nd February 2010 and have since been extended with the consent of the Respondent's Advocates.

This application is essentially dependent upon the question as to who is the beneficial owner of the parcel of land known as LR. No. 60, Olokurto Division (*the suit land*). Both the Applicant and Respondent claim it. The matter has been subject to land adjudication, and appeal to the Minister. The Land Adjudication Committee at Olokurto Adjudication Section found in favour of the Defendant/Respondent. An appeal by the plaintiff/applicant to the Minister was dismissed. The Minister's decision dismissing the Applicant's appeal was however quashed in a Ruling delivered on 29th November 2009 by Hon. Mr. Justice Maraga J (*as he then was, now Judge of Appeal*). As the appeal was quashed for breach of the principles of natural justice, it left intact the decision of the Land Adjudication Committee of Olokurto Land Adjudication Section, in favour of the Respondent.

In an application for injunctive order, the court's mandate is to inquire whether the applicant has established a prima facie case, whether he would suffer irreparable loss unless the injunction is granted, and where the court is in doubt, in whose balance or convenience would the orders of injunction lie.

In this regard, I have considered the record, including the supporting and affidavits in reply to the application. It is quite clear to me that the dispute over the suit land has been running way back to about 1967 when Kosiom Ole SaOli, the father of the original litigants, and now, grandfather of the Plaintiff/Applicant (*the father of late LEPOSO ole SAOLI*).

According to the findings of the Committee of Olokurto Land Adjudication Section, the suit land belongs to the plaintiff beneficially. It is the plaintiff's late father Leposo Ole Saoli who invited his brother Soitara Ole Saoli to the area as he was a Police Officer, and able to read and write, to help him with accounts as the plaintiff had leased the land to an Asian Jaysingh for wheat cultivation. He had shared some proceeds with his brother from the payments made to him by the Asian wheat farmer. Over time, the Defendant moved to his own parcel of land at a place known as Olo-loisikie, and returned to Olokurto during the adjudication time in 1976. The Defendant/Respondent does not therefore appear to have any interest in the suit land.

The Plaintiff/Applicant does therefore have a prima facie case with a high probability of success, and he would suffer loss which cannot be easily compensated in damages, and being in possession since 1967 and perhaps earlier through his father, the balance of convenience clearly lies with him.

Although the Chamber Summons is a departure from the principal pleadings, the record clearly shows that the plaintiff/applicant is the beneficial owner of the suit land and justice demands the grant of temporary orders pending the hearing and determination of the suit herein.

Being of the above mind, I grant the orders in terms of prayers (c) and (d) of the Chamber Summons dated and filed on 3rd February, 2010.

Dated, signed and delivered at Nakuru this 4th day of May, 2012

M. J. ANYARA EMUKULE
JUDGE