



LERIONKA OLE SOIT.....PLAINTIFF

-VERSUS-

1. NCHOMO OLE KAKUI

2. LEPARAN NAWANGAS

3. PATRICK OSINU NAWANGAS

4. JOSEPH MARIE NAWANGAS

5. OLE MOI NAWANGAS DEFENDANTS

RULING

By this application expressed to be brought under **Orders 40, Rules 1, 2, 3 and 51, Civil Procedure Rules 2010**; and **Section 1A, 3A and 63 (e)** of the **Civil; Procedure Act** , the applicant, who is the plaintiff in the suit, prays for an interim injunction to restrain the respondents, the defendants in the suit, from entering interfering with the fencing, constructions or whatsoever interfering with the suit land known as Land parcel No. **Transmara/Olalui/296**.

It is manifestly plain from the certificate of official search that the applicant is the registered proprietor of the suit land. Further it is significant that the respondents do not at all claim any portion of the said suit land.

However, what is apparent from the averments in the replying affidavit and the annexed certificates of official search is that the respondents are the registered proprietors of the adjoining parcels of land known as **Transmara Olalui/292, 293 and 294** and that there exists a serious boundary dispute as far as the suit land and all other parcels of land above mentioned are concerned.

From the pleadings on record, it is apparent that as a result of the boundary disputes, several suits have been filed by the parties in the High Courts of Kenya at Kisii and Nakuru and none of them so far has been determined.

It is in the interest of justice that peace be maintained until it is finally determined whether the respondents have encroached on to the applicant's parcel of land or not. Again, having carefully considered the principles set out in **Giella v Cassman Brown and Co. Ltd [1973] EA 348**, I am satisfied that the balance of convenience tilts in favour of the applicant in that he lives on the suit land together with his family and had erected houses on it. Further, he also grazes his cattle on it and has planted food crops like maize and beans on it.

In the result, I grant the application as prayed and I do issue an order for injunction as sought. It shall continue to operate until further orders of this court. Costs herein are awarded to the applicant but shall await the outcome of the suit.

Ruling dated, signed and delivered at Kisii this 23rd day of August, 2012.

R. LAGAT-KORIR
JUDGE

In the presence of:

Edwin Mongare court clerk

..... Counsel for the plaintiffs/applicants

..... Counsel for the defendants/respondents

R. LAGAT-KORIR
JUDGE