



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

Civil Case 201 of 2011

SAMWEL BABU MAKURU PLAINTIFF

-VERSUS-

DORCA BOCHERE STEPHEN 1ST DEFENDANT

LAND REGISTRAR TRANSMARA DISTRICT 2ND DEFENDANT

RULING

The applicant, who is the plaintiff in the suit, seeks an order of temporary injunction to restrain the respondents, *inter alia*, from in any way interfering, damaging, alienating, working on, issuing new titles or changing the registry map of land parcel **Trans Mara/Moiyoi/208** registered in the applicant's name pending the hearing and determination of this application and the pending suit.

The facts giving rise to the dispute between the parties arose as follows. **Maruate Ole Meibuko** had a big parcel of land in Transmara. In 2001 he sub-divided it into several portions. He thereafter sold one portion of 10 acres to the 1st respondent, **Dorcac Bochere**. It is registered as **Transmara/Moiyoi/207**. He then sold the adjacent portion of 27 acres to the applicant, **Samwel Babu**. The later portion is registered as **Trans Mara/Moiyoi/208**.

It is apparent that since the purchase of these parcels of land the parties have been engaged in unending legal tussle concerning ownership and boundary disputes. Consequently, several suits have been lodged in the courts in this jurisdiction and in the local Land Disputes Tribunals, up to the Provincial Land Disputes Tribunal. The respondent has indeed raised a preliminary objection to the present suit and application on grounds that it is *res judicata* as per the earlier decisions. The parties however have not displayed evidence of those suits and the decisions emanating therefrom to enable the court at this stage to determine if indeed the present application was *res judicata*. I am therefore unable on the basis of the material before me to uphold the objection.

The applicant fears that his title may be cancelled and a new one issued to his rival before the suit is heard and determined; thus, causing great loss and damage.

The District Land Registrar, **Mr. Githinji**, visited the two portions of land in Transmara in order to identify their boundaries. He had been ordered to do so by the Provincial Land Disputes Appeal Tribunal, Nakuru. He visited the said parcels on 7th September 2011 and was accompanied by the seller, **Maruate**

Ole Meibuko and the two parties to the dispute.

Mr. Githinji deponed to the following in his affidavit sworn on 1st December, 2011:-

“12. ...Mr. Maruate Ole Meibuko showed the boundary of the two parcels according to how he sold them.

13. That according to the vendor, he sold the applicant herein 27 acres and 1st respondent 10 acres.

14. That the District Land Surveyor proceeded to take the measurements for the parcels of land and it revealed that the land parcel sold was smaller in acreage than what the vendor and the parties claimed.

15. That it showed the applicant would only have 16.85 acres while 1st respondent will have 13.70 acres.

16. That on checking RIM, it revealed that land parcel Trans Mara/Moyoi/207 was located across the road while on the ground it does not exist”.

It is obvious from the Land Registrar’s deposition that there appears to be some discrepancy between the acreages the parties allegedly bought and what is actually on the ground. This issue is central to the whole dispute and can only be resolved through full hearing by the court.

As the applicant has established that he has a prima facie case to canvass before the court, he is entitled to an interim injunction pending the hearing and determination of the case.

Further, as justice looks both ways, it is in the best interests of justice to order both parties to maintain the status quo as of the date of this ruling until further orders of the court. Costs will be in the suit.

Orders accordingly.

Ruling dated, signed and delivered at Kisii this 21st day of September, 2012.

R. LAGAT-KORIR
JUDGE

In the presence of:

..... for applicant

..... for respondent

..... court clerk

R. LAGAT-KORIR
JUDGE