



**REPUBLIC OF KENYA**

**High Court at Kericho**

**Civil Suit 105 of 2011**

**FRANCIS KIPSAMICH TANGUS** (*suing as a legal representative of the Estate of*

**BRAHIM KIPRUTO RAIMOI** ..... **PLAINTIFF**

**VERSUS**

**MARITIM ARAP CHEPKWONY** ..... **DEFENDANT**

**JUDGMENT**

The Plaintiff's claim against the Defendant is for a permanent injunction order restraining him, his agents, servants, employees or from subdividing, occupying, claiming interest or doing acts that are prejudicial to the Plaintiff's proprietary interest in **L.R. NO. Kericho Chepseon/1926**.

He also seeks costs of the suit and any other relief that court may deem fit and just to grant. It is pleaded that the Defendant without any color of right or consent of the Plaintiff pursuant to an order dated 13<sup>th</sup> January, 2010 in Kericho SPMCC Misc. Application No. 108/2009 between him and one Daniel Arap Ronoh moved onto the subject land and excised off one (1) acre hence denying the Plaintiff the portion, an act that will result into him suffering irreparable damage. This has necessitated this claim. The Defendant was personally served with summons to enter appearance and plead but he failed and/or neglected to do so.

Per the evidence adduced, the Plaintiff herein is a legal representative of the Estate of Brahim Kipruto Raimoi. The Defendant herein has moved to occupy part of land belonging to the Estate of Brahim Kipruto Raimoi to the detriment of his dependants. This is pursuant to an order in SPMCC Misc. Application No.108/2009 hence this case.

I have had an opportunity of perusing the order in Misc. Application No. 108 of 2009 which was an order of the court emanating from the decision of the Land Disputes Tribunal, the matter was between Maritim Arap Chepkwony and David Arap Ronoh.

The dispute in the matter was in respect of a portion of land measuring one acre. It was ordered that Daniel Arap Ronoh surrenders one acre of land to Maritim Arap Chepkwony. The matter was in regard to land parcel **No. Kericho/Chepseon/1926**.

According to the Certificate of Official Search the land in issue belongs to Brahim Kipruto Raimoi who is now deceased whose name did not feature in the case before the tribunal.

It was upon the Plaintiff to satisfy this court that the orders sought have to be issued.

Prerequisites of granting a permanent injunction are determined under the principle of equity and according to the specific facts of the case.

I do take into consideration the fact that the evidence adduced by the Plaintiff is not challenged.

That notwithstanding, I must be guided by the principles of issuing the order sought. The law as to the principles under which such orders can be issued are well settled in the well known case of **Giella-vs-Cassman Brown & Co. Ltd (1973) E.A. 358** whereby the Plaintiff herein is expected to have a prima facie case with a probability of success and he must also show that if the order sought is not granted he stands to suffer irreparable damage.

The Plaintiff has indeed proved on a balance of probabilities that upon the demise of Brahim Kipruto Raimoi the proprietor of Title **No. Kericho/Chepseon/1926** a Succession Cause was instituted.

A grant of administration intestate was made and thereafter confirmed. The assets thereof were distributed, title **Kericho/Chepseon/1926** was identified for distribution. The Defendant herein who was not a beneficiary would not be entitled to be on that land. The Plaintiff has therefore demonstrated a prima facie case that warrants issuance of the order sought.

If the Defendant is not restrained as prayed it would mean that Estate of the deceased would not have the one acre in issue being part of it. This would result into suffering irreparable damage. Having considered all these, I find the Plaintiff having proved the case on a balance of probabilities. It is hence ordered that a permanent injunction do issue restraining the Defendant by himself, his agents, servants, employees from subdividing/occupying, claiming interest or in any other way acting in a manner that is prejudicial to the Plaintiff's proprietary interest in **LR.NO. Kericho/Chepseon/1926**.

The Defendant shall pay costs of the suit.

**Dated and delivered this 28<sup>th</sup> November, 2012**

**LILIAN N. MUTENDE**

**JUDGE**

**Counsel Appearing**

Mr. Orina advocate for the Plaintiff  
No appearance for Defendant  
Mr. Koech - Court Clerk