



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 231 OF 2010

COUNTY COUNCIL OF OLKEJUADO.....PLAINTIFF

VERSUS

MARIASI OLE PAKINI.....1ST DEFENDANT
JACOB MWANTO WANGORA.....2ND DEFENDANT
WYCLIFFE PERE MWATHI.....3RD DEFENDANT
IBRAHIM LEI OLE SONDAI.....4TH DEFENDANT

RULING

This Ruling relates to an application dated 15th September 2010 but filed on 21st September, 2010 (*the application*) in which the Applicant sought a temporary injunction (*ex parte*) pending the hearing thereof *inter partes*.

An order of injunction restraining the Defendants from further dealing with the land parcels of land known as Kajiado/Ole Kasasi/122-127 (*the premises*) pending the hearing of the application were granted on 21st September, 2010.

The application was heard *inter partes* on 3rd November 2010. For the Applicant a Local Authority under the Local Government Act (*Cap. 265, Laws of Kenya*), it was urged by Mr. Rodi that the premises arose from an original Title No. Kajiado/Ole Kasasi-78, and was the property of the Applicant, the County Council of Olkejuado until a month or so before the filing of the suit and the application when the Applicant discovered that the Defendants had "***arrogantly with impunity trespassed upon the said land purporting to allocate the same to themselves.***" Counsel relied upon the Supporting Affidavit of Frederick Odhiambo Ndede, the Applicant's Clerk.

On their part, the Defendants through the Replying Affidavit of Marias Ole Pakini sworn on his own behalf and alleges/by on behalf of the other three defendants (*Respondents*) denied the suit premises belonged to the Applicant and if it did, they acquired it "*through the right procedure and no fraud was committed as the Plaintiff/Applicant has alleged in paragraph 8 of the said Affidavit*" (i.e. the Supporting Affidavit). Again this was the thrust of the argument before me by Mrs Mbaka on behalf of the Defendants/Respondents.

The conditions for grant of an injunction were set out in the case of **GIELLA vs. CASSMAN BROWN & CO. LTD [1973] E.A. 358**. The Applicant must establish a prima facie case with a probability of success, that the applicant cannot be adequately compensated in damages, and if in doubt, the court should determine the matter on the balance of convenience.

In my view, the Applicant has established all the three principles for the grant of an injunction. The applicant alleges fraud on the part of the Defendants. This the Defendants have denied in the Replying Affidavit of the 1st Respondent. Fraud when established vitiates every form of transaction, and that is a strong argument for the grant of an interlocutory injunction. The Defendants have not demonstrated or even alluded to their ability to compensate the Applicant in the event their claim to the suit premises is successfully impugned.

Lastly, the applicant is a public body, a Local Authority, a custodian and trustee of all lands reserved under its name, which may only be alienated in accordance with the Constitution and the law. So the balance lies with the Applicant.

For those reasons, the application dated 15th September 2010 and filed on 21st September 2010 succeeds in terms of paragraphs 3 and 4 thereof.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 25th day of February 2011

M. J. ANYARA EMUKULE
JUDGE