

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL MISC. APPLICATION NO.158 OF 2008

STEPHEN KARIRU.....1ST APPLICANT
JOHN KINYUA.....2ND APPLICANT

VERSUS

MBOGOINI LAND DISPUTE TRIBUNAL1ST RESPONDENT
GRACE WAMURUANA MBOI.....2ND RESPONDENT

RULING

The applicants, Stephen Kabiru and John Kinyua brought a chamber summons dated 7th March, 2008 for leave to challenge by Judicial review the decision of Mbogoini Land Dispute Tribunal granting the ownership of a parcel of land known as Kagumo Munyaka Farm to the 2nd respondent. Leave was not, however granted. Instead, the court (Mugo, J) directed that the summons be served for *interpartes hearing* and in the meantime, the *status quo* on the suit property be maintained.

The instant application dated 24th March, 2011 has been brought on the basis that the judicial review file No. 158/2008 has gone missing, yet the 2nd respondent, Grace Wamuruana Mboi has destroyed the applicant's crops growing in the suit property. Pending the tracing, hearing and determination of the judicial review application, the applicant seeks in this application that the 2nd respondent be restrained from, interfering with the suit property described as plot No.38 in Kagochi area.

Despite service upon the 2nd respondent with the application and the hearing notice, she did not respond to the application or attend court when the matter was canvassed. Being an application for interlocutory injunction, the burden is upon the applicants to demonstrate that they have a *prima facie* case with a probability of success; that an award of damages will not adequately compensate him if the order sought is not granted. However, if the court is in doubt the matter must be decided on a balance of convenience. Have the applicants shown that they have a *prima facie* case?

The basis of their claim is that the 2nd respondent despite the orders of the maintenance of *status quo* in the Judicial Review application No. 158 of 2008 has destroyed the applicants crops on plot No.38 in Kagochi area. The applicants have not demonstrated by exhibiting any documentary evidence that they are the registered or lawful owners of the suit property. Secondly, in the Judicial review application, the dispute is in respect of a property known as Kagumo Munyaka Farm. All the annexures to that application have no nexus with the suit property.

For these reasons, the applicants have failed to demonstrate that they have a *prima facie* case. The application fails and is dismissed.

Dated, Delivered and Signed at Nakuru this 11th day of April, 2011.

W. OUKO
JUDGE

