

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO.309 OF 2010

**MATHEW KIPROP MUTAI.....PLAINTIFF/
APPLICANT**

VERSUS

**MARY MORAA NYABWORI.....DEFENDANT/
RESPONDENT**

RULING

The issues involved in this dispute are fairly straight forward and largely uncontroverted. For instance, it is common ground that the applicant, Mathew Kiprop, is the registered proprietor of MOLO SOUTH/KERINGET BLOCK 4/111 (TINET) having been issued with the title deed to that parcel of land on 31st December, 2002. The respondent has also laid a claim to the suit land which she has averred she purchased from Ezekiel Kigwa Milgo, a member of Tinet Farmers Co-operative Society. She has further asserted that she lost possession of the suit land during the 1992 tribal clashes in the area but returned in 1995 only to find the property occupied by the applicant. The dispute was referred to the Olenguruone Land Disputes Tribunal which found in favour of the respondent.

The applicant was aggrieved and moved by way of an appeal to the Appeals Committee which upheld the decision of the tribunal and ordered for the applicant's eviction. The last decision (of the Appeal Committee) was rendered on 24th February, 2009. This matter has not come to this court by way of an appeal from that decision or judicial review but by way of a plaint. The basis of claims by both parties is that each purchased the suit property from two different members of Tinet Farmers Co-operative Society. While the applicant has averred that he bought from Lucy Chebet Beibei on 9th May, 1998, the respondent has maintained that she purchased from Ezekiel Kigwa Milgo. Whereas the applicant's agreement with the said Lucy Chebet Beibei is specific that the property in the transaction is Plot No.111, the respondent's agreement (in Kiswahili language) is silent on the property the subject of the transaction. It is also worth noting that the respondent has not counter-claimed. In view of the opposing claims, it is just and fair that *status quo* of the suit property be preserved pending the determination of its ownership at the trial.

The applicant has therefore persuaded me that he has a *prima facie case*. He is in possession of both the disputed property and the documents of title which have not been challenged on account of fraud or misrepresentation. In the result, there will be a temporary injunction in terms of prayer 3 of the summons pending the hearing and determination of this suit.

Costs in cause

Dated, Delivered and Signed at Nakuru this 8th day of April, 2011.

W. OUKO

JUDGE