



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**

**CIVIL CASE NO. 136 OF 2007**

**PETER MBOTE KAMAU  
JOHN GACHURIA WANENE  
PETER GICHUHI KANGU  
(SUING AS THE REGISTERED TRUSTEE VISION IN CHRIST KENYA)  
.....PLAINTIFFS/RESPONDENTS**

**VERSUS**

**SAMUEL MAARA  
FRANCIE KARANJA (SUED IN THEIR OWN PERSONAL  
CAPACITY AND**

**AS OFFICIALS OF KAMUYU FARMERS CO-OP.  
SOCIETY).....DEFENDANTS/APPLICANTS**

**R U L I N G**

The amended plaint dated 9<sup>th</sup> August 2007 describes the plaintiff as a Church organization duly registered under the trustee (perpetual) Succession Act (Cap 164 Laws of Kenya). The defendants are described as officials and/or directors of the Kamuyu Farmers Co-operative Society which is a Society registered under the Co-operative Societies Act. It has been the plaintiff's contention that the plaintiff is the first registered owner of the whole of that parcel of land known as **LAINGUSE/KITENGA BLOCK 2 (KAMUYU)/308** and that a title deed over the parcel of land was issued on 13<sup>th</sup> March 1996 to itself. However without any justifiable cause, the defendants trespassed into the parcel of land prevented the plaintiff from constructing a church thereon.

The plaintiff therefore filed this suit for a declaration that it is the registered and lawful owner of the said parcel of land and that the actions by the defendant are unlawful.

The plaintiff also prayed for a permanent injunction to restrain the defendants from trespassing into, entering upon, obstructing and/or otherwise whatsoever interfering with any activity going on inside the

parcel of land.

General damages for trespass were also sought against the defendant.

The defendants in their defence denied the plaintiffs allegations and contended that the plaintiff trespassed and erected structures on land set aside for the defendant's trading centre.

The defendants averred that the said land parcel No. **LAINGUSE/KITENGA BLOCK 2(KAMUYU)/308** is non-existent and has been subject of proceedings at the Uasin Gishu District Surveyors Office. Further, the defendant averred that there was in existence a civil suit (i.e Eldoret CMCC. No. 412 of 1994) revolving around the parcel of land and the title documents in respect thereof.

The defendants therefore prayed for the dismissal of the plaintiff's suit. A temporary injunction order was sought against the defendant by the plaintiff vide a chamber summons dated 21<sup>st</sup> July 2009. The application came up for hearing ex-parte on the 27<sup>th</sup> July 2009 when it was certified urgent and an order made to the effect that the application be heard inter-parties on the 23<sup>rd</sup> September 2009. In the meantime the court ordered that the status quo be maintained.

On 23<sup>rd</sup> September 2009, both parties appeared in court and agreed to stand over the application to the 25<sup>th</sup> November 2009. They also agreed that the status quo be maintained.

On 25<sup>th</sup> November 2009, the plaintiffs/applicants appeared for the hearing of the application but not the defendants. The matter was stood over to 19<sup>th</sup> March 2010 and the status quo order extended.

On 10<sup>th</sup> March 2010, both parties appeared but the matter was stood over to 21<sup>st</sup> April 2010. Interim orders in place were extended. On 21<sup>st</sup> April, 2010 only the applicants appeared and prosecuted their application dated 21<sup>st</sup> July 2009 in the absence of the plaintiff.

Thereafter on the 27<sup>th</sup> October 2010, the court rendered its ruling in which the application was allowed in terms of prayer 3 of the appropriate chamber summons. A temporary injunction order was issued against the defendant pending the hearing and determination of this suit.

Since then, a date for the hearing of the main suit has not been taken. Instead, the defendants filed this present application dated 16<sup>th</sup> February 2011. The application seeks to set aside the ex-parte orders granted on the 25<sup>th</sup> November 2009 and confirmed on 27<sup>th</sup> October 2010.

It is however instructive to note that no ex-parte orders were granted on 25<sup>th</sup> November 2009. The court merely ordered that the "status quo" be maintained.

Therefore, the actual order sought to be set aside is that dated the 27<sup>th</sup> October 2010 granting a temporary injunction order against the defendant in favour of the plaintiff.

The reasons for the application are that the defendants were not given an opportunity to be heard owing to the failure of their former advocate to appear in court. Also, they were condemned unheard such that their interest stands to be prejudiced due to the plaintiffs misuse of the court order by threatening to evict the defendants from the suit property and carry out constructions thereon. Learned counsel, **Mr. Limo** argued the application on behalf of the defendants while learned counsel **Mr. Nabasenge** opposed it on behalf of the plaintiffs.

Having considered the application and the rival submissions by both sides, this court is not in a position to exercise discretion in favour of the applicants for the reasons that the hearing date for the application was taken in court and in the presence of both parties. So, there is no proper explanation by the defendants for their failure to appear in court on the scheduled date. Their allegation that their former advocate was to

blame for non-appearance is not tenable and must be treated as an afterthought since none of them was in court on that day as a party to the suit.

The order issued by the court on the 27<sup>th</sup> October 2010 was a temporary injunction pending the hearing of this suit. The order was made against them in favour of the plaintiffs who are the registered owners of the suit property and are said to be in possession thereof.

Whether the plaintiffs alleged ownership of the property is unlawful would be known after the full trial of the suit.

At the moment, the defendants are temporarily restrained from interfering with the plaintiffs' quiet possession of the suit property.

Being temporary in nature, the plaintiffs are however not expected to undertake any actions which may alter the structure of the suit property and complicate matters prior to the court's determination of their rights vis-a-vis those of the defendants over the property.

There has been no proof from the defendant's that the plaintiffs are undertaking construction on the suit property and/or they (plaintiffs) intend to evict them (defendants) from the suit property.

The present application is devoid of merit. It is hereby dismissed with costs to the plaintiff. It would be better if the parties took a date for the hearing of the suit so that a final decision may be rendered on the issues in dispute. Interlocutory applications merely serve to waste time and increase costs much to the detriment of the parties.

**J. R. KARANJA**

**JUDGE**

**(Read and signed this 15<sup>th</sup> day of June 2011 in the presence of the parties)**