

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO.310 OF 1998

PETER KAHUTHIA MWANGI..... APPLICANT/PLAINTIFF

AND

MALEWA RANCHING COMPANY LTD.....RESPONDENT/DEFENDANT

RULING

A temporary prohibitory injunction under **order 39** of the revoked **Civil Procedure Rules** (now reproduced under **Order 40** of the **2010 rules**) will issue if it is proved to the court, among other things, that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit. Such an injunction is of a preventive nature and is of no useful purpose if the act sought to be restrained has already been done.

In this matter, it is the applicant's case that he purchased two plots (Nos.30 and 332) from the original owners, Isaac Kinyanjui and Maina Kimani, who were shareholders of the respondent, Malewa Ranching Company Limited. That the shares were transferred to the applicant, who embarked on the development of the two plots by constructing a dam, planting trees and other improvements at a cost of Kshs.12m. Without the applicant's approval, the respondent caused the two parcels in question to be sub-divided into five portions, namely NYANDARUA/KIPIPIRI/LERESHWA BLOCK 1(MALEWA RANCH) 507, 508, 509, 512 and 513; that Nos.507, 509 and 513 were allocated and transferred to the applicant while Nos.508 and 512 have been fraudulently transferred to third parties.

In his chamber summons dated 16th November, 2010, the applicant seeks to restrain the respondent **“.....from selling, transferring, sub-dividing or in any other way whatsoever from dealing with.....”**

the two parcels, namely Nos.508 and 512 until the main suit is heard and determined.

In both the replying and what is headed supplementary affidavit, the respondent has deposed that the two parcels have indeed been transferred and one registered in the names of Elizabeth Wambui Mwangi and Joseph Kamau Kimani, respectively, to whom title deeds have been issued. With that revelation, the applicant's counsel instead of seeing the obvious futility in pursuing the present application and seeing the sense of withdrawing it has filed an amended plaint bringing on board the two purchasers.

I started by stating that a prohibitory injunction is not efficacious where the act sought to be stopped has already been committed. The suit properties having been disposed of an injunction is of no use. The horse has bolted and no amount of restraining order can stop it.

The application fails and is dismissed with costs.

Dated, Delivered and Signed at Nakuru this 3rd day of June, 2011.

**W. OUKO
JUDGE**