

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 24 of 2009

GLADYS CHEPKEMOI MAINA.....1ST PLAINTIFF
EMILY MAINA.....2ND PLAINTIFF
AGNESS MAINA.....3RD PLAINTIFF
CHEMUTAI MAINA.....4TH PLAINTIFF
VERSUS
TAPTUGEN ARAP MAINA.....1ST DEFENDANT
MONICA CHEPKORIR MAINA.....2ND DEFENDANT

RULING

The plaintiffs in this case claim that as children of the 1st defendant, Taptugen Arap Maina, they occupy ½ of his piece of land situate in Nakuru and known as **Njoro/Ngata Block 5/108** (the suit piece of land). In April 2008, the 2nd defendant who is their step mother entered upon the portion they occupy, demolished their buildings and cultivated it. On enquiry the plaintiffs were surprised to learn that the 1st defendant had transferred the suit piece of land to the 2nd defendant. They regard that act as fraudulent. They therefore claim for an order to rectify the register and have the 1st defendant registered as the owner of the suit piece of land after which the 1st defendant should be compelled to transfer half of that land to them. They also claim for an order to restrain the defendants from interfering with their quiet occupation of the portion in their possession.

Contemporaneous with the filing of the suit they filed an application for injunction. When it came before me for further hearing on 20th March 2010, the 1st defendant vehemently denied being the father of the plaintiffs and stated through his counsel that he is prepared to undergo a DNA examination to verify his claim. When I asked the applicants if they were also ready to undergo the same examination they declined.

In view of this and with nothing else on record to proof their beneficial interest in the suit land I find that the applicants have not made out a prima facie case with a probability of success. Consequently I dismiss their application for injunction with costs to the defendant.

DATED and DELIVERED this 26th day of April 2010.

D. K. MARAGA
JUDGE.