



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

Civil Appeal 47 of 201

**FLORENCE BUKURU
WYCLIFFE OYONDI BUKURU.....APPELLANT**

AND

LUGARI YEARLY MEETING OF THE

RELIGIOUS SOCIETY OF FRIENDS CHURCH.....RESPONDENT

THROUGH

**EPHRAIM MALENYA
ROGERS K. WAMBIA
JONATHAN OMBEMBO OMBIMA.....RESPONDENTS
JONATHAN OMBEMBO OMBIMA.....RESPONDENTS**

J U D G M E N T

This is an appeal from the Ruling /order of I. Maisiba Resident Magistrate wherein he, on the 17th day of March, 2010 issued orders of a temporary injunction restraining the Appellants herein by themselves their agents/servants/relatives/ or anybody acting on their instructions from burying or keeping the body of the deceased Japheth Buruku Oyondi on the parcel of land known as Lugari/Lukuyani Block 1 Vihiga /244 pending the hearing of the suit. The memorandum of Appeal raises the following grounds that

1. The lower court erred in law and fact in not dismissing the application on the ground that the plaint was defective as it had only a prayer of injunction and so a hearing date could not be fixed on a non-existent suit.
2. The lower court erred in law and fact in not dismissing the application on the ground that it had no jurisdiction to hear the suit as the matter was mainly on boundary dispute/trespass on land.
3. The lower court erred in law and fact in not dismissing the application as no leave was sought to bring a representative suit.
4. The lower court erred in law and fact in not dismissing the application as the principles for the Grant of an injunction were not met.

At the hearing of the appeal it was submitted for the appellants that the deceased was a member of the respondent church and had lived on the suit land for 31 years and had buried his three children on the same with the agreement and participation of the respondent. That when the appellants' husband and father, respectively, died on 2nd March 2010 the Respondent participated in the burial arrangements

only for them to turn around and obtain an order of injunction restraining the appellants from burying their deceased husband/father respectively on the suit land. Further submissions was that the deceased was to be buried on plot number 155/156 which is where the appellants homestead stands.

In opposing the appeal it was submitted that the Respondents had proved that they were entitled to the grant of an order for an injunction as they held title to the suit land. That the suit was ordered to be heard on its merit and this appeal is premature and ought to be dismissed with costs.

I have carefully perused the trial court's proceeding and Ruling. I find that that court correctly directed its mind to the issues placed before it and addressed same appropriately. The suit land to wit LUGARI/LUKUYANI BLOCK 1 VIHIGA/244 is registered in the name of the Respondents as per copy of the title Deed produced before the trial court. That makes out a prima facie case in favour of the Respondents and that finding by the trial court was a sound one. There was no basis upon which the trial court could find that what was before him was a boundary dispute because no such material was placed before him.

The finding of the trial court on the issues of representative suit and the defect in the plaint to be matters for determination at the trial of the suit was sound. The appellants would have been best placed and their interests best served by an early determination of the suit which the trial court had ordered but which the appellants did not heed.

I find no error either of law or fact made by the trial court that would empower me to interfere with the ruling. This appeal has no merit and the same is hereby dismissed. In the circumstances of the case each party will bear its own costs. It is so ordered.

Dated signed and delivered at ELDORET this 30th day of June, 2010

P.M. MWILU

JUDGE.

In the presence of both appellants in person – present

Cheluget – Advocate for Respondents

Andrew – Court Clerk.