



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

**Civil Case 116 of 2010**

**GEORGE KIHARA KOINANGE.....APPLICANT**

**VERSUS**

**MOSES LESIAMON OLE MPOE.....RESPONDENT**

**RULING**

The applicant, **George Kihara Koinange**, has instituted this suit against the respondent, **Moses Lesiamon Ole Mpo**e for an order of permanent injunction to restrain the latter from managing the affairs of the parcel of land known as LR No.8669/3 – Muthera Farm, Mau Narok.

In the meantime, the applicant has brought the present application for those orders to be issued on a temporary basis pending the determination of this suit. There is yet another application by the applicant seeking the assistance of the OCS, Mau Narok Police Station to assist in the execution of the orders sought in the first application. On the other hand, the respondent has also filed an application similarly asking the court to restrain the applicant from evicting or interfering with him pending the hearing of the application. The respondent in addition has filed a notice of preliminary objection. This is a strange dispute as will shortly emerge.

The respondent is employed as a Senior Supervisor in charge of tenants' leases and security in Muthera Farm, Mau Narok, one of the assets of the late Mbiyu Koinange. According to the respondent's own affidavit, he is in charge of over 4000 acres of land comprised in the farm.

The applicant, one of the sons of the late Mbiyu Koinange has alleged in the suit and in this application that the respondent has been wasting the property. That he has tried to "*grab*" the farm through a suit being Nakuru HCCC No.341 of 2004 in which the respondent and another claimed the property as Maasai customary and native land; that he has misappropriated the proceeds of the farm; that he has been using organized gangs and the police to deny the Koinange family access to the farm; that he has allowed on the farm unknown people including people from the Maasai community to invade the farm.

As a result of these activities, the respondent was served with a notice terminating his services. He has defied the notice hence this suit and that is why I have observed that this is indeed a strange suit.

It is averred that when a temporary order suspending his services as the supervisor of the farm was sought to be served on the respondent by the applicant, the former through organized gang prevented the latter from entering the

farm. Subsequently on 5<sup>th</sup> June, 2010, when the applicant returned to the farm, he was attacked and sustained very serious injuries including loss of three fingers.

The respondent's only contention in this suit is the capacity of the applicant to institute it. He has argued that the grant of representation for the estate of the late Mbiyu Koinange was obtained in Nairobi HCCC No.527 of 1981 and that the applicant is not one of the administrators of the estate and hence incompetent to bring a suit to protect the estate. There is clearly no doubt that the estate is administered by David Njunu Mbiyu, David Waiganjo Koinange, Margaret Njeri Mbiyu and Eddah Wanjiru Mbiyu.

On 22<sup>nd</sup> March, 1993, Githinji, J (as he then was) appointed the applicant as an –

**“5. ....agent of the administrators to manage, take inventory and collect all incomes accruing from the urban properties.”**

His brother Isaac Njunu Mbiyu (now deceased) was also appointed an agent of the four administrators to manage, preserve, protect and to prepare inventory of all the agricultural properties comprised in the estate.

The court further ordered that:

**“6. THAT both managers appointed as agents of the administrators do act in accordance with directions and instructions of all administrators”**  
(Emphasis mine)

Subsequently from a letter dated 18<sup>th</sup> February, 2010, the applicant was appointed to act in place of the late Isaac Njunu Koinange as the agricultural manager and was authorized to pursue the matter of gross mismanagement and misappropriation of revenue in the farm by the respondent.

On 16<sup>th</sup> February, 2010, two (2) days before the letter giving authority to the applicant to act on the respondent, the former's advocates, M/s. Njiru Boniface and Company Advocates had written to the respondent suspending him.

At a family meeting held on 4<sup>th</sup> March, 2010, that suspension was rescinded by three administrators (although only two signed the letter). Following the attack on the applicant at the farm on 5<sup>th</sup> June, 2010, three administrators wrote a letter on 8<sup>th</sup> June, 2010 summarily dismissing the respondent accused him of, among other things, misappropriation of funds, assault on the applicant, incitement of members of the Maasai community against the late Mbiyu Koinange's family, colluding with members of the Maasai community to file a constitutional reference, Nbi. H.C. Constitutional Ref. No.54/2010. The respondent still maintains that termination of his services cannot be legitimate as it has not been sanctioned by all the four administrators.

Without expressing any definite opinion at this stage, it is apparent that the High Court appointed the applicant as an agent of the administrators. *Prima facie* he has authority of the administrators to bring this suit in the course of that agency.

It is abundantly apparent, at least to me, that the administrators have made a majority decision that the respondent's services be terminated. It would be foolhardy for the respondent to expect to stay on even in light of such clear intentions of the administrators.

This suit is strange because in the normal course of things an employer need not file a suit of this nature to terminate the services of an employee. An employer does not need an injunction to restrain an employee from performing his work. It is perhaps only in Kenya that one is likely to encounter situations like this – where an employee stays put even after termination of his services.

*Prima facie* case has been established to warrant the issuance of an order of temporary injunction in terms of paragraph 2 of the chamber summons dated 18<sup>th</sup> May, 2010 pending the determination of the suit, if at all. The injunction is clearly mandatory in nature which in clear circumstances like this can issue at interlocutory stage.

In view of the averments in the pleadings and statements from the bar about tension around the farm, I will also,

in exercise of my inherent jurisdiction grant relief sought in the notice of motion dated 3<sup>rd</sup> June, 2010 and direct the OCS, Mau Narok Police Station to ensure that the order is served and effected without breakdown of law and order as indeed it is the duty of the police in all situations to maintain law and order.

The respondent shall meet the costs of this application.

**Dated, Signed and Delivered at Nakuru this 30<sup>th</sup> day of July, 2010.**

**W. OUKO  
JUDGE**