



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Case 196 of 2004

NONKIMAYAT OLE NAADUKILA & 19 OTHERS.....APPLICANTS
VERSUS
JOHN TANTE OLE MESHUKO & 25 OTHERS.....RESPONDENTS

RULING

I have before me an application dated 7th July 2004 brought under **Order 39 Rules 1, 2 and 3** of the **Civil Procedure Rules** as well as **Section 3A** of the **Civil Procedure Act**. It seeks an injunction to restrain the defendants from evicting the plaintiffs from or interfering with the plaintiffs quiet and peaceful enjoyment and occupation of land parcels **Nos. 356, 362, 459,460,461, 462, 463, 487, 491, 493, 521, 1175, 1176, 1178, 1180, 1231, 1232, 1245, 1246, 1257, 1292**, situate in Kipise area, Enoosupukia Location within Narok District until final determination of this suit or until further orders of this honourable court. It also seeks that and costs of this application be provided for.

The application is based on the ground that the plaintiffs have been in occupation of the suit piece of land for over 20 years and that the area Adjudication Committee has allocated those pieces of land to them. The plaintiffs also claim that when the defendants sought to evict them from those pieces of land, the Adjudication Committee arbitrated on the matter and again ruled in favour of the plaintiffs. Despite all that the defendants have persisted in attempting to evict them. The plaintiffs therefore aver that unless restrained by this court the defendants are going to invade them and cause bloodshed.

The defendants on their part deny invading the plaintiffs' parcels of land. In his replying affidavit the first defendant avers that, except for parcels of land known as Nos. 521 and 1292, the defendants occupy and have been occupying the other suit pieces of land since time immemorial. He further avers that it is the plaintiffs who own other pieces of land elsewhere which he has enumerated who have, out of malice and greed invaded the defendants' parcels. Though the first defendant admits that the dispute was indeed arbitrated upon by the Adjudication Committee, the defendants appealed against the Committee's decision and the Arbitration Board reversed the Committee's decision and confirmed that the pieces of land belong to the defendants. It is after that, that the plaintiffs obtained leave of the Adjudication Officer to institute this suit and did institute it after five years. In the circumstances the first defendant prays that this application be dismissed with costs.

I have considered these rival submissions. The *locus classicus* decision in the case of **Giella v Cassman Brown & Co [1973] EA 358** is unassailable. One of the cardinal principles enunciated in that case is that before meriting an injunction the applicant must establish a prima facie case with a probability of success.

On the material placed before me, the plaintiffs have not established such case. What I have are counter allegations of both parties having been in occupation of the suit pieces of land for a long time. Neither side has been issued with Title Deeds. To grant the plaintiffs' plea will as it were lead to squabbles of who occupies which piece of land.

In the circumstances I dismiss this application and direct that the status quo obtaining today be maintained until this suit is heard and determined.

The costs of this application shall be costs in cause.

DATED and DELIVERED on this 7th day of July, 2010.

D. K. MARAGA
JUDGE.