



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT 252 OF 2007**

**RHODA KANDIE.....1<sup>ST</sup> PLAINTIFF**

**KIGEN KANDIE.....2<sup>ND</sup> PLAINTIFF**

**KIPTUI KANDIE.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**KANZIWA LTD.....DEFENDANT**

**RULING**

**This is an application brought by the plaintiffs under Order 39 Rule 1(a) of the Civil Procedure Rules for an interlocutory injunction to restrain the defendant from disposing by way of sale or any other manner of alienation, trespassing or in any other manner interfering with the plaintiffs' peaceful occupation of the 50.18 hectares portion of the defendant's piece of land situate in Njoro area and known as L.R. 9726 (suit of land) pending the hearing and determination of this suit. It is based on the ground that the defendant has subdivided the suit piece of land and is now in the process of selling the subdivisions thereof.**

**The defendant does not only deny the sale allegation but also wonders how, as the registered owner of the suit land it can trespass on its land. If anything, it is further averred for the defendant, it is the plaintiffs who are trespassing on its land. It therefore prays for the dismissal of the application.**

**In this Originating Summons (OS) the plaintiffs seek a determination whether they have acquired the suit land by adverse possession and if so whether they should be registered as proprietors of the same. The claim is based on an alleged sale agreement entered into in October, 1982 between the late Aaron Kimosop Kandie (the deceased), whose estate the plaintiffs are administrators of, and the defendant and the deceased's occupation of the same for over 20 years. In the replying affidavit sworn by a director of the defendant, David Kahumbu, the defendant has denied any such agreement and claimed that it evicted the plaintiffs who were trespassing on its land.**

**I have considered these rival contentions and perused the affidavits in support as well as those in opposition to the application and the annexures thereto. One of the annexures is a photograph of a sign board erected on the suit land advertising plots thereon for sale which the defendant has not disputed. As the defendant has also conceded that at one time the plaintiffs were "trespassing" on the suit land, I find that the plaintiffs' claim in this OS cannot be said to be frivolous and dismissed of hand. I therefore agree with counsel for the plaintiffs that if the defendant is not restrained and it sells subdivisions of the suit land, the substratum of this suit will be destroyed. It therefore follows that the subject matter of this suit should be preserved. In the circumstances I grant this application and order that pending the hearing and final determination of this suit an interlocutory injunction is hereby issued to restrain the defendant by itself, its servants and/or agents from selling or in any way disposing of the suit land or interfering with the plaintiffs' possession of it. The costs of this application shall be in cause.**

**DATED and delivered this 18<sup>th</sup> day of May, 2009.**

**D.K. MARAGA**

**JUDGE.**