



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

Civil Case 45 of 2009

1. JOHN KIPKEMOI TONUI}1ST PLAINTIFF
2. JOEL KIPLANGAT TONUI}2ND PLAINTIFF
3. ISMAEL KIPRONO TONUI}3RD PLAINTIFF

VERSUS

1. SAMWEL TONUI} 1ST RESPONDENT
2. PHILIP TONUI} 2ND RESPONDENT

RULING

Application for injunction dated 25th May, 2009

I: Background

1. Original land parcel Kericho/Getarwet/45 was registered and or owned by one Samwel Kiptonui Arap Chepkwony. He is alive and not deceased. The said owner is not party to this suit.
2. On the 14th January, 1991 a land dispute case was held whereby the said Samuel Kiptonui Arap Chekwony had informed the elders that he had two houses and thirteen (13) sons. Any son who had moneys to sub –divide and pay for the surveyor to his land he would accordingly apportion that son land. So far only three sons complied. The other ten failed to do so.
3. The said Samuel Kiptonui Arap Chekwony then said those sons unable to so make payments should be under his guardianship.
4. The tribunal agreed with him and took the position not to interfere with the said old man as to his wishes when alive.
5. The other sons wanted the property to be divided equally amongst the two houses. The old man had outlined a division he did using a hedge. Any difference would be compensated with other properties that he had.
6. An application for an injunction restraining the defendants was issued. This was due to the fact that the two respondents were interfering with the use of the land already sub-divided.

7. I am of the opinion that a full trial should be heard on the material facts. The reasons being that the application seeks the very same prayers in the main suit.
8. It is said the respondents had been served and are left to file their defence and enter appearance. There is no affidavit of service to show proof of such service on this court's file.
9. Accordingly I dismiss this application with the costs being in the cause.
10. The applicants should proceed to the main suit on this matter on the defendants being served.

DATED this 15th day of June, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

V.K. Bii advocate instructed by M/s. V.K. Bii & Co. Advocates

for the Plaintiffs/Applicants-present

N/A for the Defendants/Respondents