



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Civil Suit 70 of 2004**

**BENARD WAMALWA NAMUNWAPLAINTIFFS
DANIEL WANJALA NAMUMWA**

~VRS~

GEOFFREY KIVEU JARED.....DEFENDANT

AND

DAVID MUSEE NAMUNWA.....APPLICANT

RULING

The Defendant/Applicant in his application dated 22nd September, 2009 seeks for orders to restrain the Plaintiffs from interfering with his peaceful occupation Number Ndivisi/Ndivisi/1170. The grounds are that the land is registered in the name of the Applicant since 1980. The Plaintiffs are now interfering with his peaceful occupation of the land. They have now interfered with boundaries of the land. The Applicant contends that there is need to have the Plaintiffs/Respondents be restrained form such actions pending hearing and determination of the suit.

The application was opposed on grounds that the alleged interference with boundaries is not true. It is only the Land Registrar who can deal with issues of boundaries and not the court.

The Applicant was represented by Mr. Wattangah who held the brief of M/s Ebosi & Wandago Advocates. Mr. Makali represented the Respondents.

It is not disputed that the land Ndivisi/Ndivisi/1170 is registered in the name of the Defendant. It has also been shown that the Respondent's land borders that of the Defendant. The said land is the subject matter of this case filed by the Respondents who allege that the title was obtained through fraud. Although the alleged interference of the boundaries has been denied, the Applicant has demonstrated that his rights to the land are being interfered with. Such interference will lead to damage and waste of the suit premises if it continues. The Defendant has absolute rights of ownership which must be protected until the suit is heard and determined.

I find the application merited and I allow it as prayed.

**F. N. MUCHEMI
JUDGE**

Dated, Delivered and Signed at Bungoma

*This 7th day of December, 2009 in the presence of
Mr. Murunga for the Plaintiff and Mr. Milimo for Eboso for the Defendants.*