



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 27 of 2007

RAEL MBURA M'IMARIA ..... 1<sup>ST</sup> PLAINTIFF

MWATHATHI M'IMARIA ..... 2<sup>ND</sup> PLAINTIFF

VERSUS

CELINA KANINI MBURUNGA ..... DEFENDANT

RULING

Chamber summons dated 16<sup>th</sup> October 2007 seeks temporary order of injunction to restrain the respondents in person, her agent, assignees or any person on their behalf from interfering, cultivating, harvesting or in any other way dealing with the suit land pending the hearing and determination of this suit.

The application is based on the grounds that the applicant has been living on the suit land since 1974. That following the death of her husband in 2003 the respondents have been harassing her in order to drive her out of the suit land. She explains that her claim in the Land Disputes Tribunal was decided in her favour after which the respondents bought this suit. She avers further that the respondents have invaded the suit land and forcefully harvested her crops.

In the process the son to one of the respondents assaulted the applicant's daughter. The respondents, it is claimed, have now cultivated the suit land and are preparing to plant. The applicant states that if the respondents are not restrained she will be left with no source of income. She explains, however, that the suit land is under demarcation and therefore she is unable to show that the land belongs to her late husband.

In a replying affidavit, the 2<sup>nd</sup> respondent states on her behalf and on behalf of the 1<sup>st</sup> respondent that the suit land belongs to them and that it is the applicant who has been harassing them.

The jurisdiction of this court under Order 39 of the Civil Procedure Rules is to ensure that any property in dispute, whether that dispute has been brought to court by the plaintiff or the defendant, is not wasted, damaged or alienated by any party to the dispute. It is therefore incumbent upon the party invoking this jurisdiction to provide the particulars of the property sought to be preserved. Any form of injunctive relief comes with far reaching implications hence the need for the applicant to demonstrate a *prima facie* case and the magnitude of loss. See **Giella V. Cassman Brown & Co. Ltd** (1973) EA 358. The applicant in the instant matter has not specified the suit property upon which she seeks restraining orders.

Learned counsel for the applicants submitted that the details are contained in the plaint. The plaint does not specify the suit land. Indeed this court (Lenaola J) in a related matter of judicial review involving the same parties and presumably the same suit land, noted that without the particulars of the land in dispute it was not possible to grant leave to bring judicial review proceedings.

The conditions for granting an interlocutory injunction are sequential so that the second condition can

only be addressed if the first condition is satisfied and only when the court in doubt will it address the third condition. See **Kenya Commercial Finance Co. Ltd V. Afraha Education Society** (2001) IEA 86.

The applicant has failed to demonstrate that she has a *prima facie* case with a probability of success. For these reasons the application dated 16<sup>th</sup> October 2007 must fail and is hereby dismissed with costs.

Dated and delivered at Meru this 1st day of February.... 2008.

**W. OUKO**

**JUDGE**