



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 560 of 2000

KIILU NDUVA MAKITE & 44 OTHERS PLAINTIFFS

VERSUS

LUKENYA RANCHING &

FARMING CO-OPERATIVE SOCIETY DEFENDANT

RULING

APPLICATION TO ENJOIN FUTURE DEFENDANTS

TO THE SUIT 22 JANUARY 2008

I: Background

1. The main subject of this suit is Land. LR10501/2 Athi River and LR8529/4 Machakos that had been purchased by the defendants herein M/s Lukenya Ranching and Farming Co-operative Society Ltd sometime in 1970. (herein referred to as the society).

2. The society sub-divided the land and distributed it to their members. They found the plaintiffs allegedly on the land as squatters (which is denied by them and is subject to a hearing in a trial). An attempt to evict them culminated to several suits being filed between the parties (being Resident Magistrates Criminal Court case 1979; Hccc 1253/80 (OS); Hccc 377/89; Hccc 97/77).

3. There is a possibility the parties in some of the suits may not be the same.

4. When this current suit was filed, for adverse possession, the 45 plaintiffs successfully applied for an injunction restraining the society from evicting them and or interfering with their quiet possession of the suit land (Gacheche J 19.9.01).

5. Contempt proceedings were dismissed on 7.2.03 (Hayanga J) and injunctive orders extended till the finalization of the suit Ransely J (14.7.05).

6. No hearing has been conducted although directions as to the mode of hearing the originating summons was given by

Githinji J (as he then was) (8 June 2000).

II: Application 22 January 2008

7. The plaintiff contend that the proposed new defendants have in effect trespassed on the land. They pray that the defendant so proposed be enjoined to this suit be liable subject then to orders already existing on the court file on the injunction.

8. The proposed defendants appointed an advocate. Consent dates for hearing the application of 22 January 2000 was taken by the two advocates for the parties but the respondent failed to attend court. There was no reply filed by the respondents.

9. This court allows the application and accordingly enjoins the said respondents to this suit. That they file their replying affidavit within 30 days of to days date. The applicants be permitted to file a corresponding reply.

10. The parties are to then proceed to do discovery and hold pre-trial conference then set this matter down for hearing subject to any pending applications.

11. Costs to the applicant.

DATED THIS 25TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

R.N. Mungao instructed by Ochanda Onguru & Co. Advocates for the plaintiff

M/s Ngolya instructed by Ngolya & Co. Advocates for the plaintiff/respondent