



REPUBLIC OF KENYA

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

Civil Case 1549 of 1998

PAREMERES OLE KOILEL PLAINTIFF

VERSUS

- 1. MOSHORO GROUP RANCH**
- 2. NTARI MOSHORO**
- 3. SALIMU KINDI**
- 4. SIMON MUTUTUA**
- 5. KINKI KOILEL**
- 6. LESHUNET KOILEL**
- 7. LEMISOS KOILEL**
- 8. RUPEN KOILEL**
- 9. NKOSHOO NGOTIEK**
- 10. MPOYO SUNGUYIAH STEPHEN**
- 11. JOSEPH K. SUNGUYIAH**
- 12. ALFRED OLE LOONTUROT**

13. ENE KOILEL KALAI TE DEFENDANTS

RULING

APPLICATION FOR INJUNCTION 6 MAY 2008

I: Background

1. The original suit filed by the original plaintiff, one Parmers Ole Koilel was dismissed for non attendance by the said plaintiff and his advocate to court. It was a suit involving a land buying company whereby it is alleged that the plaintiff had donated portions of his land to a community school. The land buying company allocated it to others.

2. Those allocated the land filed defence in which they denied the allegation and claimed in their counter-claim that the plaintiff was a tress-passer. That he should be evicted from the suit premises.

3. The status of this suit is that the main suit having been dismissed for non-attendance (I believe this is the second time it occurred) the defendants were to pursue their **counter-claim**. This court rules as such.

4. Instead of setting the case down for hearing of the counter claim the defendant/applicant filed an application for an injunction to restrain the plaintiff from trespassing upon the land.

II: Application 6 May 2008

5. The said application for an injunction really is seeking a mandatory injunction. You cannot restrain what has already occurred. The plaintiff is on the land. He is alleged to have fenced off the land and built a shack. The defendants themselves have counter-claim for trespass and seek his eviction. I would in the circumstances rule that an application for injunction is incompetent. I dismiss the same. As the plaintiff filed no papers I do not award him any costs. His advocate is wanting in handling this case.

6. I direct that parties set down this matter for trial subject to existing applications.

DATED THIS 25TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

O. Agina instructed by Ojwang Agina & Co. Advocates for the plaintiff/applicant – present

J.N. Pareno instructed by J.N. Pareno & Co. Advocates for the defendant/respondent - present