



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

Civil Case 31 of 2008

THOM SAMUEL MARORO PLAINTIFF

VERSUS

- 1. ISAAC MAGANGI OMWOYO)**
- 2. JOSEPH OENGA OMWOYO)**
- 3. EVANS NYASINI OMWOYO) DEFENDANTS**
- 4. SABINA OSEBE OMWOYO)**

RULING

The plaintiff filed an application dated 14th May, 2008. He prayed for a mandatory order of injunction to compel the defendants, their agents and/or servants to vacate parcels of land known as MAJOGGE/BOOCHI 2342 and MAJOGGE/BOOCH/2343, hereinafter referred to as “*the suit properties*” pending hearing and determination of this suit.

The application was supported by an affidavit sworn by the plaintiff. The application was made on the following grounds:

- (a) The suit properties are registered in the name
of the plaintiff’s deceased father, SAMSON MARORO
OCHANDA, and the plaintiff has been granted letters
of Administration Ad Litem to enable him to

institute this suit.

- (b) The defendants had unlawfully invaded the suit properties and put up temporary structures thereon and were threatening to harm the plaintiff for resisting their invasion of the suit properties.
- (c) That the defendants had their own parcels of land at Mosora in Bassi constituency and had no reason for trespassing on the suit properties.
- (d) That the defendants were intermeddling with the estate of a deceased person, the plaintiff's father having been in occupation of the suit properties for over 50 years.
- (e) The defendants had filed a claim over the said parcels of land at Ogembo Land Disputes Tribunal but the plaintiff filed judicial review proceedings arguing that the said Tribunal had no jurisdiction to handle the claim. When the defendants were served with the judicial review application they decided to move into the suit properties forcefully and destroyed crops that were growing thereon.

The defendants filed neither a replying affidavit nor grounds of opposition. The plaintiff's application seeks a mandatory injunction to compel the defendants to move out of the suit properties and remove their structures thereon.

It is true that the plaintiff herein has commenced judicial review proceedings against the Chairman, Gucha Land Disputes Tribunal as well as the defendants herein; the same is **Misc. Civil Application No.25 of 2008**. The defendants' action of invading the suit land is clearly calculated to defeat or frustrate those proceedings. The defendants have not advanced any reason to justify their actions. In the absence of any explanation, I take it that their actions amount to outright intermeddling with an estate of a deceased person.

In **MALIDI AIR SERVICES & ANOTHER VS HALIMA ABDINOOR HASSAN**, Civil Application No.202 of 1998, the Court of Appeal stated that:

“A mandatory injunction at an interlocutory stage is rarely granted; only when the plaintiff's case is clear and incontrovertible.”

I believe the above may be said of the plaintiff's case. The mandatory injunction order sought by the plaintiff is justified and I grant the same. The defendants shall bear the costs of this application.

DATED, SIGNED and DELIVERED at KISII this 29th day of September, 2008.

D. MUSINGA

JUDGE.

Delivered in the open court in the presence of:

Mr. Momanyi for the Plaintiff.

N/A for the defendants.

D. MUSINGA

JUDGE.