



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Civil Case 45 of 2008**

**JOHN LOLCHOKI.....PLAINTIFF**

**VERSUS**

**AGNES WANGOI NAMBASO.....DEFENDANT**

**RULING**

By his chamber summons dated 31<sup>st</sup> January 2006 and brought under Order 39 Rules 1, 2, 7 & 9 of the Civil Procedure Rules as well as under Sections 63(e) and 3A of the Civil Procedure Act, the plaintiff seeks a temporary injunction to restrain the defendant by herself, her agents and/or servants from entering upon, cultivating, leasing, dealing in any manner whatsoever and/or interfering with the parcels of land known as Title Numbers Narok/Cis-Mara/Eor Enkitok/179, 180, 181, 182, 184, 185, 186, 187 & 188 (the suit pieces of land) pending the hearing and determination of this suit. He also seeks an order to evict the defendant from the suit pieces of land.

Basing himself on the averments in the affidavit in support of the application, Mr. Ochieng for the plaintiff submitted that the Plaintiff being the registered proprietor of the suit pieces of land, his title thereto is, under Section 28 of the Registered Land Act, indefeasible. He is therefore entitled to their possession and quiet enjoyment. The defendant has, however, not given him any peace. She has instead, despite her knowledge of the plaintiff's ownership leased the suit pieces of land to third parties who have now invaded them. To avoid a breach of peace, he submitted that the defendant should not only be restrained from leasing the suit pieces of land but should also be evicted therefrom.

Mr. Kimatta for the defendant also basing himself on the averment of his client's replying affidavits denied that the defendant has leased the suit pieces of land as claimed by the plaintiff. He said had that been so evidence to that effect could have been placed before court. He further submitted that the defendant has been on the suit piece of land for many years even when the plaintiff purported to purchase them.

I have considered these submissions and perused the pleadings in this case. There is no denying the fact that the plaintiff purchased the suit pieces of land from the estate of Meshack Partasio Nambaso (the deceased). The defendant is a family member of the deceased and the plaintiff has not denied her claim that she has been on the suit pieces of land for quite sometime now. In the circumstances I agree with her counsel, Mr. Kimatta, that the most I can do in this application is to restrain the defendant from leasing or in any way disposing of the suit pieces of land. Consequently I allow this application but not as sought. Instead I order that the defendant is, by herself, her servants and/or agents, hereby restrained from leasing and/or disposing the suit pieces of land until this suit is heard and determined. The costs of this application shall be costs in cause.

**DATED and delivered at Nakuru this 13<sup>th</sup> day of November, 2008.**

**D. K. MARAGA**

**JUDGE**