



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MERU**

**Civil Suit 77 of 2006**

**MARTIN KINYUA ..... PLAINTIFF**

**VERSUS**

**VERONICA KANYAMU ..... 1<sup>ST</sup> DEFENDANT**

**JAMES NDEGWA ..... 2<sup>ND</sup> DEFENDANT**

**PHARIS RIUNGU ..... 3<sup>RD</sup> DEFENDANT**

**NJERU IKINGI ..... 4<sup>TH</sup> DEFENDANT**

**PHARIS NYAGA ..... 5<sup>TH</sup> DEFENDANT**

**NYAMU MBAONI ..... 6<sup>TH</sup> DEFENDANT**

**KARANI MBAONI ..... 7<sup>TH</sup> DEFENDANT**

**MUGAMBI MBAONI ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

The applicant herein is seeking restraining orders against the respondents, and specifically that the respondents be restrained from trespassing into the applicants parcel of land Karingani/Mugirirwa/1231(the suit land) and further that they be restrained from cutting down the applicants trees.

It is the applicant's case that he is the registered proprietor of the suit land, where he lives and cultivates. That in the year 2002, the respondents variously and jointly trespassed on the suit land and have been cutting down and selling the trees without his consent.

The police and local administration have not helped the situation. That if the respondents are not restrained as prayed, the applicant shall suffer irreparable damage and loss.

Although the respondents filed a replying affidavit through one of them, and although they were present

when the hearing date was fixed they did not attend to canvass the averments in the replying affidavit. I will nonetheless consider the affidavit.

The 5<sup>th</sup> respondent has deposed that the suit land is a family land where the 1<sup>st</sup> respondent lives. That all the respondents are the sons of the late Ikingi Ndegwa, the first registered owner of the suit land.

That the applicant obtained his title to the suit land through fraud and is not entitled to the orders sought. The sole question in this application is whether the applicant is entitled to injunctive relief.

An injunction will issue where the applicant has demonstrated that he has a *prima facie* case. Secondly an injunction will normally not issue unless the applicant stands to suffer loss which cannot be compensated in damages.

Finally, where the court is in doubt, the application will be decided on a balance of convenience. See Giella V Cassman Brown & Co(1973) EA 358.

In considering the first aspect, I am not expected to consider the merits or otherwise of the opposing positions. A *prima facie* case does not call for consideration of definite points of law or facts.

See Mrao Ltd V First American Bank of Kenya

2003) KLR 125. Has the applicant demonstrated a *prima facie* case? According to a certificate of official search annexed to the applicant's supporting affidavit the suit land is registered in the name of the applicant. It further shows that the suit land has no inhibitions, cautions or restrictions of any nature.

The respondents claim that the applicant fraudulently obtained registration against the 1<sup>st</sup> respondent, who is the widow of the original proprietor. Those claims are not backed with any evidence. In their defence they have listed particulars of fraud which, strictly speaking do not amount to particulars as required by Order 6 Rule 8 of the Civil Procedure Rules. They needed to state clearly how the applicant ended up being registered as the proprietor of the suit land. There was also no evidence that indeed the suit land belonged to the deceased, Ikingi Ndegwa.

For the foregoing reasons, it is ordered that there shall be an order of injunction restraining the respondents, their servants, agents and employees from trespassing onto the suit land, Karingani/Mugirirwa/1231 until this suit is heard and determined.

The respondents are further restrained either by themselves, their agents or servants from cutting down trees on the suit land.

The costs of this application are awarded to the applicants.

DATED AND DELIVERED AT MERU THIS 11th DAY OF October, 2007

W. OUKO

JUDGE