



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 291 of 2002**

Land and environmental Law Division

Subject of main suit: Land ownership.

- i) LR Loc.2/Makomboki/1297
  - ii) LR Loc.2/Makomboki/1298
  - iii) Eviction of 9 defendants from use of LR Loc.2 Makomboki 1297
  - iv) Erected temporary structure.
3. Application of 14 March 2001.
- i) Injunction restrain defendants from erecting any structures until finalization of suit.
  - ii) Succession Cause 1/77

Muranga Law Courts

Thika Court – CA 10 of 192.

4. Held: Application for injunction dismissed.

5. Case Law

6. Advocate:

A.W. Ngugi for the & Co. Advocates for the applicant

J.N. Ndungu Mwaura & Co. Advocates for the defendant

EUTYCHUS MWANGI KARANJA .....PLAINTIFF

**VERSUS**

MARGARET WAMBUI KAMAU .....1<sup>ST</sup> DEFENDANT

ELIAS KARANJA MWANGI ..... 2<sup>ND</sup> DEFENDANT

KARIUKI KARANJA ..... 3<sup>RD</sup> DEFENDANT

GATHUI KARANJA .....4<sup>TH</sup> DEFENDANT

MAINA KAMAU .....5<sup>TH</sup> DEFENDANT

MWANGI KAMAU .....6<sup>TH</sup> DEFENDANT

KAANJA KAMAU .....7<sup>TH</sup> DEFENDANT

KARANJA MWANGI .....8<sup>TH</sup> DEFENDANT

PHILISILA WAMBUI KAMAU .....9<sup>th</sup> DEFENDANT

**RULING**

I: Injunction

1. the subject of the main suit herein is land. The applicant/plaintiff filed a plaint herein and prayed for an injunction orders to restrain 9 defendants who are all dependents of one James Kamau Kirithi (now deceased) from interfering with his parcel of land being LR LOC.2 Makomboki/ 1297.

2. According to the plaint the respondents have been allocated Loc.2 Makoboki/1297 together with his land being LOC Makomboki/1298. The suit defendants herein are required to be restrained and trusted for LR Loc 2 to be restrained and evicted from LR LCO.2 Makoboki/1298 and to instead only use their parcel of land.

II: Application 20 March 2007.

3. The application for injunctions states that there was a succession cause No.1 of 1974 at Maragwa Laws courts and the Thika Court suit application No.10/1975 that cause the plaintiff be the registered owner of the suit land in question. The land is 5.27 ha. The green could show a purchasers interest and caution not permitting transaction of the property.

4. The main suit did not disclose there was a related Succession cause contrary to LN 36/2001 which provided that all related suits concerning parties be grounded.

5. Is there a prima facie case made out with a probability of success?

6. The applicant herein does not disclose in his plaint that this matter originated in 1974. He does not disclose that there is an intended sale of the suit land to the Kenya Development Tea Authority whereby a caution had even placed on 5 April 2004 by a purchaser. He does not disclose that he obtained title on 29 January 2004 thus meaning he may have entered and or negotiations of the land to be sold three months.

7. The information obtained above comes from the annexure of his affidavit being the green card and from the very brief supporting affidavit that is 7 paragraphs in which the plaintiff states he is the proprietor of the land. That the defendant has refused to move and he wants them vacated and thus the injunction to restrain them from being on the parcel of land.

8. His plaint discloses that all the defendants are children and grand children of Mwangi Karanja the rightful registered owner of Loc.2 Makomboki/1298. The defendant he states was the registered beneficiary of one James Kamau Kariithi who is the now registered owner. I note that he is not party to this suit. The land is held in trust for the defendants by the said James Kamau Kariithu.

9. The plaintiff thereof seeks orders for the defendants to vacate from land belonging to the plaintiff or Be Forcibly evicted.

II: Finding.

10. I find that there may be no prima facie case made out to have the defendants evicted out of the land. The plaintiff at this stage has not demonstrated that he would suffer irreparable harm. He has not offered security in the event orders obtained may be wrong.

11. I decline to issue the orders for injunction against the defendants and note that the same prayers are contained in the main suit.

12. I order that the application be dismissed. There will be no orders as to costs as the defendants were absent.

13. This suit be set down for hearing after the plaintiff has served the summons to enter appearance upon all the defendants, the pleading to be closed parties to proceed to conduct a pre-trial conference under their own supervision and there after agree on issues for determination.

Dated this 21 day of November 2007 at Nairobi.

M.A. ANG'AWA

**JUDGE**

A.W. Ngugi for the & Co. Advocates for the applicant

J.N. Ndungu Mwaura & Co. Advocates for the defendant