



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

**MILIMANI LAW COURTS**

**Misc Appli 1028 of 2006**

**NAHASON MUKUNDI NGUNYI & ANOTHER.....APPLICANT**

**VERSUS**

**RUTH KAHUNGI.....RESPONDENT**

**RULING**

This is an application under Order XXXIX Rules 1(a) and 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking two orders:

1. An injunction to restrain the defendant by herself, her representatives, agents, employees and/or any other person from interfering with the plaintiffs' land parcel No. 2117 and 2306 OLARAGRWA SCHEME in any way pending the determination of this application.
2. An injunction to restrain the defendant by herself, her representatives, agents, employees and/or any other person from interfering with the plaintiffs' land parcel No.2117 and 2306 OLARAGWA SCHEME in any way until the determination of this suit.

The application is based on the grounds that:

- a) The plaintiffs are in occupation of the suit land.
- b) The 1<sup>st</sup> plaintiff is the registered owner of the suit land in trust for members of the family and
- c) The circumstances of this case dictate that it is only fair and just that orders sought be granted.

The application is also supported by an affidavit sworn by the 2<sup>nd</sup> applicant in which he avers that the suit land is a family land and the 1<sup>st</sup> applicant is the registered proprietor in trust for the members of the family; that the defendant is their sister, that the defendant wants to convert the land into her name to the detriment of the other family members.

The defendant is using the Tribunal to harass the family members. The applicant has attached a search certificate which shows that the suit land is registered in the name of the first plaintiff Nahashon Mukundi Ngunyi and there is restriction registered against the suit property which prohibits any dealing with the suit land without involving the defendant Ruth Wathaiya Kahungi. There is also an annexure marked HT II, which indicates that there is a dispute pending before the North Kinangop Division Tribunal between the same parties being Cause No. 23 of 2006. But it is not clear from the record whether the dispute was referred to the Tribunal by the court or not. This being a dispute over family land the same could have been referred to the Tribunal by consent. If that is the position and if the dispute was referred to the Tribunal by consent, then the same dispute could not come to court before that process is finalized.

The parties having surrendered to that jurisdiction they ought to have participated to its conclusion and any aggrieved party could only come to the High Court to challenge the decision of the Tribunal on a

point of law. Otherwise at this stage the applicants have not established that the defendant has done anything to indicate that she wants to convert the suit land into her name to the detriment of the family members. Further there being a restriction registered against the suit land, no party can deal with the suit land without following the due process of the law.

For the above reason, I decline to issue the orders sought in the plaintiffs' Chamber Summons dated 27<sup>th</sup> September 2006.

Dated and delivered at Nairobi this 30<sup>th</sup> day of October 2006

**J.L.A. OSIEMO**

**JUDGE**