

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 204 of 2004

AGNESS LOSHEN PARSAPIYO

DANIEL PINGUA OLE PARSITAU.....PLAINTIFFS/APPLICANTS

VERSUS

OLOISHO-OIBOR GROUP RANCH

REGISTRAR OF LANDS-KAJIADO.....DEFENDANTS/RESPONDENTS

RULING

The applicants brought this suit by way of a plaint seeking for an order restraining the respondents from subdividing allotting, alienating, transferring or otherwise interfering with land parcel **LR NO. KAJIADO/NTARSHAT/475** measuring 340 Hectares.

Simultaneously with the plaint they filed a Chamber Summons under Certificate of Urgency seeking orders:

1. That the respondents by themselves, agents and or servants be restrained from interfering, re-adjudicating, subdividing or otherwise implementing any reductions to land parcel **LR NO.KADJIADO/NTARSHAT/475** measuring 340 Hectares pending the hearing and determination of this suit.

The application is supported by an affidavit sworn by the first plaintiff in which he has deponed on the facts as contained in the plaint. That the two applicants are brother and wife to one **DAVID PARSAPIYO PARSITAN** who was the registered member of the first plaintiff **OLOISHO-OIBOR GROUP RANCH** as a trustee for the family members. That he was entitled to 340 Hectares. That the said **DAVID PARSAPIYO** left home on 5th August 1999 but he never came back and he has never been seen since then. That first defendant has since reduced the said parcel of land to 16.2 Hectares. That since his brother disappeared 7 years have not elapsed so that presumption of death cannot be drawn to allow the appointment of a legal representative. That the first defendant has obtained consent to subdivide **LR NO.KAJIADO/NTASHART/580** and distribute the subdivided parcels to its members.

Mr. Ocharo for the applicants submitted that the intended subdivisions will reduce the said parcel of land from 340 Hectares to 16.2 Hectares. He requested the court to issue an order of inhibition to preserve the applicants interest until the suit is heard and determined.

The application is opposed by the respondents who have filed a replying affidavit sworn by **MOSES LEKOIYA TIMAN**, the Chairman of the first respondent, **OLOISHO-OIBOR GROUP RANCH** who has deponed that the applicant's are misleading the court, that the intended parcel of land to be subdivided **LR NO. KAJIADO/NTASHART/580** is not the same as **KAJIADO/NTASHART/475**.

He further filed a supplementary affidavit in which he has deponed that the said **DAVID PARSITAN PARSAPIYO** was a registered member of the first defendant. That the parcel of land was subdivided and the said David Parsitan was given 16.2 Hectares which was his entitlement. Mr. Wandabwa for the respondent submitted that the application is an abuse of the process of the court as the applicants have no locus to sue in this matter. They appeared before Ransley J and obtained an injunction over **LR NO.KAJIADO/NTASHART/475** but now in this application they are mentioning different parcel of

land **LR NO.KAJIADO/NTASHART/580**. They were also ordered to take a hearing date in the registry on priority basis before 30th November 2004 but they have not complied with the order. This application is just meant to delay the hearing of the suit. Mr. Wandabwa in conclusion urged the court to dismiss the applicant's application as the land sought to be inhibited is not the subject matter of the suit. I agree with Mr. Wandabwa that since the inhibition sought is over **LR NO. KAJIADO/NTASHART/580** while the subject matter of the suit is **LR NO. KAJIADO/NTASHART/475**, this application must fail and the same is dismissed with costs to the respondents.

Delivered and dated at Nairobi this 19th day of July 2005.

J.L.A. OSIEMO

JUDGE