



**REPUBLIC OF KENYA**

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

**Civil Case 467 of 2005**

**ANDREW ONDINYA OOKO &**

**3 OTHERS.....PLAINTIFFS**

**VERSUS**

**WILFRED OLUOCH ODALO &**

**OTHERS.....DEFENDANTS**

**RULING**

The plaintiff ***DANDORA OFF KANGUNDO ROAD SELF HELP GROUP*** through their appointed officials brought this suit against the defendants seeking two prayer (a). A permanent injunction restraining the defendants, their servants agents and or employees from entering, trespassing, remaining on, tampering and or encroaching on the parcels of land known as **LR NO.18271** and on portions owned by the plaintiffs in **LR NO.18276** and **LR NO.18277** and from interfering with the plaintiffs lawful operations and possession of the subject parcels of land.

(6) A mandatory order compelling PETER OCHIENG OWNO the 2nd defendant to surrender to the plaintiffs official documents relating to the suit land namely (i) Black books used by members in balloting for the allocation of plots on the subject land and two maps showing the allocation of the plots on the subject land.

Simultaneously with the plaint the plaintiff took but a Chamber Summons application under certificate of urgently seeking similar prayers as those in the plaint. When the application came up for hearing Mr. Kabaka counsel for a preliminary objection on a point of law. He submitted that the suit land is Government land and therefore the plaintiffs have no locus standi.

They are strangers on the Government land. The plaintiffs oppose the preliminary objection on the ground that the plaintiffs have averred that they were allocated the land by the .....that ownership of the suit land is not an issue of a point of law but a point of evidence.

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose off the suit.

A preliminary objection raises a pure point of law which is argued on the assumption that the facts pleaded by the other side are correct.

The preliminary objection raised by the defendants raises points of fact which can only be established through evidence and therefore lacks in merit and the same is dismissed with costs to the plaintiffs.

Dated this 19th day of May 2005.

**J.L.A. OSIEMO**

**JUDGE**