



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HCC NO.92 OF 2003**

**ALICE NJOKI MAINA.....PLAINTIFF**

**VERSUS**

**PHILIP KAREITHI MAINA.....DEFENDANT**

**RULING**

Alice Njoki Maina the applicant herein seeks an order of temporary injunction under order XXXIX rule 1,2,3, and 9 of the Civil Procedure Rules restraining the Respondent, his servants and agents from interfering or in any other way dealing with land Parcel Laikipia/Daiga Ethi Block 1/46 (Magutu). Although the prayer sought is a temporary injunction, it is evident from the above that it is not couched in temporary terms as the effect if granted as prayed would be to restrain the Respondent in perpetuity.

It is evident from the plaint and the defence filed in this suit together with the applicant's affidavit in support, that the applicant's suit upon which his application for a temporary injunction is underpinned is a suit for trespass to land. Although the applicant averred in her plaint that there is no other suit pending between her and the Defendant over the same subject matter, she has admitted in her supporting affidavit that the Respondent has lodged a claim before the Laikipia Land Disputes Tribunal. Her advocate has been at pains to explain that they have properly come before this court as the tribunal had no members to hear the suit its members having been degazetted. That however is hardly an excuse for this court to ignore the proceedings before the Land Disputes Tribunal. There is an appropriate procedure to have the suit initiated in the tribunal either stayed or transferred to this court. That is the avenue that the applicant ought to have followed. I do concur with the Respondent's advocate that this application is an abuse of the process of the court.

Secondly, the applicant has not satisfied this court that she is likely to suffer irreparable loss if the temporary injunction is not granted. Her contention is that she will suffer irreparable loss because she is not able to farm the land. That will not result in irreparable loss but it is a loss which can be quantified and adequately compensated by an award for damages.

In the circumstances of this case it would not be appropriate to grant the prayers for a temporary injunction. The application dated 23rd October 2003 is therefore disallowed. Costs to the Respondent. Orders accordingly.

**Dated, signed and delivered this 5th day of May 2005.**

**H. M. OKWENGU**

**JUDGE**