

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

CIVIL CASE 40 of 2004

STEPHEN WAMBUA KIVINDYO ::::::::::: 1ST PLAINTIFF

JOSEPHINE KIVINDYO ::::::::::: 2ND PLAINTIFF

VERSUS

MUNYWOKI ISAI ::::::::::: DEFENDANT

R U L I N G

The application dated 19.4.2004 is brought pursuant to Order 39 Rule 1, 2 and 3 of Civil Procedure Rules, Section 3 A Civil Procedure Act. The applicants are the two plaintiffs Stephen Wambua Kivindyo who is the administrator of Kivindyo Isai's estate and Josephine Kivindyo a beneficiary of the said estate. They seek orders of injunction to issue against the defendant/respondent to restrain him and his agents or servants from interfering, trespassing onto or committing acts of waste on the parcel of land Makueni/Kyaluma/101 until this suit is heard and determined.

The 2nd applicant contends that the defendant has been threatening to evict her from the said parcel of land and yet that is where she lives and cultivates having been given permission by the 1st plaintiff. She depones in her affidavit in support of the application that her relatives and servants have been threatened by the defendant/respondent and she fears that such eviction would cause her irreparable loss because this is where she resides and cultivates.

The applicants annexed to the application a grant of letters of administration which were issued to the 1st plaintiff Stephen Wambua Kivindyo and Wambua Kivindyo. Both as joint administrators of the estate. The defendant/respondent did not file any grounds or replying affidavit to the application. Defendant attended court on 9.6.2004 and was given time to file his papers but when this application came up for hearing again on 22.6.2004, he had not filed anything. It therefore proceeded unopposed.

The applicants also attached proceedings of the Land Disputes Tribunal sitting at Makueni in 2001. The parties to these proceedings were Kivindyo Isai objector and Joseph Muniwoki Isai. The Land Disputes Tribunal awarded the land in issue to Kivindyo Isai who is said to be deceased now and 1st plaintiff is the administrator of his estate. The respondent has not shown that he has any interest in the land. First plaintiff is a special owner being an administrator of the said estate.

If the 2nd plaintiff is evicted from her land she would indeed suffer irreparable harm and I find that the plaintiffs have established a prima facie case to warrant order of injunction.

The defendant is hereby restrained from trespassing on plaintiffs premises, known as Makueni/Kyalama/101 till this suit is heard and determined. Costs to be in the cause.

Dated, read and delivered at Machakos this 6th day of July 2004.

R. V. WENDOH

JUDGE