



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**H.C.CIVIL CASE NO.1768 OF 2002**

**GICHUHI KIMIRA ..... PLAINTIFF**

**VERSUS**

**PAUL KIMOTHO & 26 OTHERS ..... DEFENDANTS**

**RULING**

In this application filed on 29th November, 2002 along with a plaint for similar orders the Plaintiff,, hereafter called the applicant seeks against inter alia SAMUEL NGUNU KIMATHO AND MAAKA MUKUMI MUGWERU order restraining them from entering land parcel No.13041 or any part thereof pending the hearing of this suit on the grounds inter alia that he is the sole owner thereof. The respondents however strenuously oppose the application on the grounds , but the suit premises have long been sub-divided and not they are the registered owners of 1/3 thereof each and cannot be therefore be restrained from enjoying their own properties.

There is no dispute that the suit premises of which the applicant used to be the sole registered owner has since been sub-divided through litigation between the applicant and the respondents. Each of them is now entitled to 1/3 of the said suit premises. The applicant contends that it is yet to be sub-divided when the defendant contends that it has been subdivided into 3 portions registered as LR NO's13041/R, 13041/1 and 13041/2, of which the Plaintiff is entitled to 1304/1 while the Defendants are entitled 13041/1 and 2 respectively.

The Principles on which Injunction should be given are now clear. An Applicant should show a prima facie case with a likelihood and success. Secondly, the feared injury should not be capable of being adequately compensated by damages. Thirdly if in doubt, then the court can decide the matter on balance of convenience.

Mr. Njiru, the learned Counsel for the Applicant conceded that there have been suits between the parties concerning the suit premises and that each of the person is entitled to 1/3 of the suit premises. According to him however the execution of the court orders giving the parties share have been executed according to the procedures laid out on O.21 of the Civil Procedure rules to the respondent are therefore not entitled to the possession of their share as yet. As they do not hold a consent putting them into possession, then they should be restrained from taking possession otherwise both through a consent of possession issued by the court.

Mr. Munyu, the Learned Counsel for the Respondent however conceded otherwise. In the first place he submitted the orders sought the order sought originally court be extended to the respondents as the application is yet to be amended to include them. Secondly, the respondent already held titles and cannot be restrained from taking possession by a party whose claim to him has been dismissed by the various courts.

As can be seen, the courts including the Court of Appeal have held that the applicant is not entitled to the portion nor registered in the names of the respondent. This continued stay thereon is therefore in contempt of the court orders and as such it would be an abuse of the Court's Process to protect such a party who has no respect for court orders. Instead of behaving like a law abiding citizens, he waits for execution to issue and also files cases based on the technicalities and procedure, thereby wasting court's

precious time.

Even if he were to succeed in technicalities of procedure, what he could be entitled to is hereby the loss or inconvenience which he may have suffered by reason of being required and were without a court order. This can be qualified and he could be compensated by damages adequately. However as he is in contempt and court order it is unlikely that he could be awarded anything on this suit. The above being the view of this court. I had that a case for grant of an injunction has of been made by an applicant herein and I hereby dismiss the application with costs.

**Orders accordingly.**

**Dated and delivered this 30th day of June, 2003**

**G.S. MBITO**

**JUDGE**