



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

PET 25 OF 2019

IN THE MATTER OF ARTICLES 19,20(4) (a), 21(1),22(1) (d), 27(1)(2)(3) and 60(1) OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF MAASAI CUSTOMARY LAWS

AND

IN THE MATTER OF PETITION BY

JOHN RATIKA KOINI.....1ST PETITIONER

JOSEPH LEMAYIAN KOINI.....2ND PETITIONER

ALLAN SUPEYO KOINI.....3RD PETITIONER

VERSUS

SAMSON KIPAS OLE KOINI.....RESPONDENT

RULING

By a Notice of Motion dated 29th October, 2019 and brought under order 40 (1) and order 51 of the Civil Procedure Rules the applicant sought for an order of temporary injunction restraining the respondents from interfering with land parcel Cis Mara /Olololunga/4870 and 101 pending the hearing and determination by the suit herein. The Application is based on the grounds that the respondent has been making efforts to sub divide the suit land among some of his children to the exclusion of others and that the suit land is ancestral land and family property and it will be unfair to exclude some of the children. The application was further supported by the affidavit of the applicant who contended that the respondent is their father and that he has commenced the process of sub dividing the suit land to their exclusion and they may suffer if they are excluded.

The application was opposed by the respondent who averred that he is the registered and absolute owner of the suit land and the applicant is among his sixteen children. He stated that he has lived in harmony with his family until recently when the applicant started to interfere with his quiet enjoyment of his land in which they entered the suit land started commencing development thereon and they have denied him and the other children access to the land.

The parties were requested to file their submissions in respect to the application herein but none have done so since 14th November, 2019 and I will thus proceed to make a determination of the Notice of Motion lack of filing submissions notwithstanding.

This is an application in which the applicant seeks the discretion orders of injunction the conditions to the grant of the same is now well settled as to whether applicants have established a prima facie case with probability of success, whether damages will not be adequate compensation and on whose side does the balance of convenience tilts.

In the instant matter the applicants only relationship with the suit land is that they are the children of the respondent and are apprehensive that they may be excluded from the division of the land. The respondent stated that the applicants have literally moved into the land and denied him and the others access. Mere apprehension without concrete evidence is not ground for the grant for injunction. Furthermore, a party seeking the equitable discretion order of injunction must come to court with clean hands, those unilateral decisions to forcefully move into the land without the consent of the registered owner extinguishes their prayers for an order of injunction.

From the above I find that the applicants have not satisfied the conditions for the grant of orders of injunction and accordingly dismiss the Notice of Motion dated 29th October, 2019 with costs to the respondents.

DATED, SIGNED and DELIVERED IN OPEN COURT AT NAROK on this 5th day of MAY, 2020.

Mohammed Kullow

Judge

5/5/2020

In the presence of:

CA:Chuma

Ms karia for the respondent

Mr Tanyasis for Onduso for the applicant

Mohammed Kullow

Judge

5/5/2020