



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAORK**

**ELC CAUSE NO. 68 OF 2018**

**SAITOTI KIOK.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**ERNEST TUBULA KIOK.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**-VERSUS-**

**SEMEYIAN OLE KIOK.....DEFENDANT/RESPONDENT**

**RULING**

By a Notice of Motion dated 4<sup>th</sup> October, 2018 the Applicant sought for orders of a temporary injunction and conservatory orders restraining the respondent his agents, and whosoever acting on his instructions from leasing, intimidating, threatening, evicting and/or interfering with the applicants' peaceful occupation of land parcels Narok/Cis-Mara/Olololunga/15953,15954,15955,15956,15957,15958 and 15959 and 15960.

The Application was based on the grounds that the 1<sup>st</sup> and 2<sup>nd</sup> applicants are beneficiaries by way of a trust on the suit parcels which are registered in the name of the respondent and that the applicant and their other four siblings have beneficial interest on the land which was previously part of land parcel Narok/Cis Mara/Olololunga/12064 which was hived from LR No. Narok/Cis Mara/29 which was registered in the name of Francis Kiputit Kiok (deceased) who was also holding the land on his own behalf and on behalf of his brother Tina Ole Kiok (deceased) who was the father of the applicant and the respondent. It is the applicants position that after the demise of Francis Ole Kiputit Kiok his family took out letters of administration vide succession cause No. 312 of 1979 and that despite the applicant being beneficial owners the respondent has refused to distribute and transfer to his mother and his other siblings the share of the land despite the fact that he holds the land in trust.

The Application was opposed by the respondent who had filed a replying affidavit. It is the respondent's contention that land parcel Cis Mara/Olololunga/15953-15960 emanated from the sub division of land parcel Cis Mara/Olololunga/12064 which he was the absolute owner and that upon the death of his uncle Francis Kiputit Ole Kiok the administrators of his estate who are the applicants administered his estate and that he never held the resultant parcels of land. He stated that he does not belong to the family.

The respondent further state that the applicants allege to bring the instant application on behalf of others whose identity has not been disclosed nor their authorization to file the suit herein disclosed.

I have considered the application and the submissions of the applicants and the issues for determination before me at this stage is whether the applicant has satisfied the conditions for the grant of the order of injunction and conservatory orders. It is now settled what are the conditions for the grant of orders of injunction as to establish a prima facie case with probability of success, whether damages may not be adequate compensation and in whose balance does the balance of convenience tilt.

The applicants contend that they have a beneficial interest in the land together with those other siblings as the Respondent was holding the land in trust for them. The respondent on his part states that it is his own parcel of land and have not held the land in trust for the applicant and further that there were administrators of the estate of the applicants' father.

Having considered the rival position that the matter portrays I find that this is a matter that can best be settled at a full hearing where evidence of the parties will be taken and various documents including titles, maps, sub division plans, mutation forms and other documents examined and therefore in the interest of justice and to preserve the suit parcel of land I do order that the parties do maintain status quo obtaining when the instant application was filed pending the hearing and determination of the substantive suit.

I also order that each party bears its own cost.

**DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 5<sup>TH</sup> day of MAY, 2020.**

**Mohammed Kullow**

**Judge**

**5/5/2020**

In the presence of:-

CA:Chuma

N/A for the parties and advocates

**Mohammed Kullow**

**Judge**

**5/5/2020**