



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 505 OF 2017**

**PATRICK KINYAMAL OLE MUYIA.....PLAINTIFF**

**VERSUS**

**ORPUSI OLE SIMBA (ALIAS) ORUPUSI MUYIA.....1<sup>ST</sup> DEFENDANT**

**NAOMI NARIKUMURAN MUYIA.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Application before me is the Plaintiff/Applicant's Notice of Motion dated 18<sup>th</sup> July, 2017 brought under Order 40 Rule 1,2,3 seeking for orders to restrain the defendants by themselves, agents, servants or authorized representatives from moving in surveyors for the sub division of land parcel no. TRANS MARA/KAPUNE/146 pending the hearing and determination of the application and the suit herein.

The Application was based on the grounds that he 1<sup>st</sup> Defendant is the registered owner of the suit land, however, being the father to the plaintiff did divide the land into 3 parcels whereby he took one portion and gave a parcel each to his sons and the Plaintiff took his portion and has since developed the same, fenced it and planted more than 2000 mature trees. The Application was further supported by the affidavit of the Plaintiff/Applicant wherein he deposed that he was given a portion of the land by his late father prior to his death and his father had married the 2<sup>nd</sup> defendant and during the time she had never raised any issue in respect of how the land was apportioned by his late father. He further contends that the 1<sup>st</sup> Respondent wants the land sub divided in which he will suffer loss and damages.

The Application was opposed by the 1<sup>st</sup> Respondent who states that he is the absolute owner of the suit parcel of land and states that he never apportioned and sub divided his land amongst the members his family and that the contents of the plaintiff/applicant supporting affidavit is untrue and it is now that he wishes to have the suit land be divided equally among his family. However, the Plaintiff is selfish and wants to take a bigger share of the land.

I have read the application before me and the submissions filed by the parties and this being an application for injunction the issue for determination before me is whether the plaintiff has satisfied the grounds upon which orders sought can be granted.

From the pleadings it is not disputed that the 1<sup>st</sup> Respondent is the registered owner of the land and the Applicant is his son. However, the 1<sup>st</sup> Respondent contends that contrary to the applicant's application he had not sub-divided the land among his family members and accuses the applicant for being selfish and wants to take a large share.

For one to benefit from the orders of injunction he must establish a prima facie case with a probability of success from the foregoing, I find that the applicant has not demonstrated that he has a strong case and furthermore the 1<sup>st</sup> Respondent is the registered owner of the suit land.

From the foregoing and having found that the applicant has failed to establish a prima facie case and the balances of convenience in the matter tilts in favour of the 1<sup>st</sup> respondent I find that the Notice of Motion dated 18<sup>th</sup> July, 2017 is not merited and I thus dismiss the same with costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **11<sup>th</sup>** day of **July, 2019**

**Mohammed Noor Kullow**

**Judge**

**11/7/19**

In the presence of:

Ms Namunyak for Ombati for the Plaintiff/Applicant

N/A for the Defendant/Respondent

CA:Kimiriny

**Mohammed Noor Kullow**

**Judge**

**11/7/19**