



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**MISC. (REFERENCE) APPLICATION NO. 1 OF 2018**

**OLOIRIEN GROUP RANCH.....APPLICANT/OBJECTOR**

**-VERSUS-**

**MCKAY & CO. ADVOCATES.....RESPONDENT/ADVOCATE**

**RULING**

By a Notice of Motion dated 23<sup>rd</sup> July, 2019 the Applicant sought for the following orders: -

1. Spent

2. That pending interpartes hearing the court be pleased to grant injunction to prohibit the respondent, its agents and or servants from completing any form of transfer or any other sub divisions arising from Title No. Trans Mara/Olorien/1.

3. That the court do restrain the respondent either by itself, or through its agents and or servants from disposing sub dividing, disposing of or howsoever from completing by conveyance or transfer, leasing charging of any sub divided parcels from Title no. Trans Mara/Olorien/1 pending he hearing and determination of this application.

4. That the court do restrain the respondent either by itself, or through its agents and or servants from disposing, sub-dividing, disposing off or howsoever from completing by conveyance or transfer, leasing charging of any sub divided parcels from title No. Trans Mara/Olorien/1 pending the hearing and determination of the Respondent's Application dated 2<sup>nd</sup> November, 2018.

5. That the court do order that the respondent herein to deposit kshs. 52,247,550/- (plus VAT) in court or in a joint-interest earning account in the names of the advocates for the applicant and respondent as security for the satisfaction of the certificate of costs dated 12<sup>th</sup> October, 2018.

6. That the costs of this application be provided for.

The Application is based on the grounds that the applicant who is an advocate had obtained a bill of costs in Narok ELC Civil Misc Application No. 3 of 2018 and that the Respondent has commenced the sub division of title No. Narok/Trans Mara/Olorien/1 And may soon dissolve and wind up its operation and that the same will defeat the enforcement of the applicant's certificate of costs and thus delay the revenue which it previously earned. The application was further supported by the Affidavit of Paul Momanyi Nyaosi who avers that the applicant had acted for the respondent in Narok ELC No. 6 of 2017 and they failed to pay its costs which have become due and thus the filing of this instant application. It is the applicant's further contention that the respondent obtained the subject parcel of land through the legal service of the applicant, however, their costs remain outstanding.

The applicant further avers that the respondent has already commenced the sub division of the parcel of land and in the process of transferring its shares to its members which will lead to the dissolution and consequently defeat the enforcement or the order of its costs.

The Application was opposed by the respondent by way of grounds of opposition. It is the respondent's contention that the process of sub division has been overtaken by events as the same was concluded in 2014 before the relationship between the applicant and respondent arose. The respondents further argue that it has an arguable defence pending in court in which the respondent questions the retainer, instructions and the involvement of the applicant in petition No. 495 of 2017 and that the order to deposit the sum of kshs. 52 million will be punitive and will act as a barrier to the respondent's access to justice.

The applicoatn was canvassed by way of written submissions and both parties had filed the submissions accordingly.

Having considered the application and the pleadings which are filed I do find that the applicants have not satisfied the condition for the grant of an injunction. The grant of the said orders may affect other third parties who were not instructed by the applicants.

However, in the interest of justice to balance the scales of justice pending the hearing and determination of the reference herein I order the respondents to deposit the sum of kshs. 17,000,000 which is almost a third of the taxed bill of costs as security in a joint account in the names of both advocates.

Orders accordingly.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **13<sup>TH</sup>** day of **MARCH, 2020**.

**Mohammed Kullow**

**Judge**

**13/3/2020**

In the presence of:

CA:Chuma/Kimiriny

Mr Korir holding brief for Dungi for the objector

Mr Tanyasis holding brief for Oyomba for the respondent

**Mohammed Kullow**

**Judge**

**13/3/2020**