



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 546 OF 2017

TURANYA OLE KOISIKIR.....PLAINTIFF

-VERSUS-

NAYIARE ENE KOISKIRR.....1ST DEFENDANT

PAKINE OLE KOISIKIRR.....2ND DEFENDANT

TOPOIKA OLE KOISIKIRR.....3RD DEFENDANT

RULING

By a Notice of Motion brought under order 40 Rules 1,2 and 3 of the Civil Procedure Rules the Defendant/Applicant sought for orders that pending the hearing and determination of the application interparties the plaintiff/respondent by himself, agents or servants be restrained by way of an injunction from trespassing, encroachment, grazing and/or in any manner dealing with parcel of land known as Cis Mara/Ewaso Nyiro/2272 and 2271and further a permanent injunction do issue restraining the plaintiff/respondent from trespassing, encroaching and/or dealing with the suit parcel of land pending the hearing and determination of the suit and costs be provided for.

The Application was based on the grounds that the 2nd and 3rd defendant/applicant are absolute registered proprietors of the suit parcels of land which arose out of the sub division of land parcel No. Cis Mara/Ewaso Nyiro/245 which was registered in the name of the 1st Defendant/Applicant and despite being the owners they were denied the usage of the land by the plaintiff/Respondents who continuously graze their cattle on the land and as a result they have suffered loss and damage.

The Application was opposed by the Plaintiff /Respondent who contend that he is the son of Kiporonyo Koiskikir who is deceased and that his late father was a member of Ewaso Nyiro Group Ranch but following his death his name was substituted with that of his mother who is the 1st Defendant but he was not given his share of the suit land by his mother though he has a beneficial interest in his land and he wants to stop the transfer of the entire land to the 2nd defendant as land parcel Cis Mara/Ewaso Nyiro/345 was not his mothers and attempts to sub divide the land would lead to his eviction from the land.

The parties though given the chance to have the application canvassed by way of submissions none of them did so and I will now determine the application in the absence of their submissions.

The instant application is one seeking the relief of injunction the grounds upon which the grant of injunction can be made is now settled. One must show a prima facie case with probability of success,

damages may not be adequate compensation and the balance of convenience tilts in his favour. In the instant application the Plaintiff/respondents and the defendant/applicants are the same family. It is the applicant's contention that they are the registered owners of the suit land and the plaintiff/respondent has denied them its usage.

The Plaintiff/Respondent on his part contends that the suit land was registered in the name of the 1st Defendant following the death of their father and that he has a beneficial interest in the land a fact which is not denied by the applicants.

From the facts though the applicants have the land registered in their names, the respondents interest being a son of their deceased father, his interest in the suit land can't be overlooked and in my mind this is a matter that can only be determined at a full hearing where parties will give evidence to the interest of each of the parties and in the circumstances, I find that the applicants have not proved the ingredients for the grant of orders of injunction, however in view of the fact that the parties to the suit are from the same family I do order that status quo be maintained by the parties pending the hearing and determination of the suit herein. Each party shall bear its own costs.

DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 22nd day of APRIL, 2020.

Mohammed Kullow

Judge

6/5/2020

In the presence of:

CA:Chuma

N/A for advocates and parties

Mohammed Kullow

Judge

6/5/2020