



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 48 OF 2016

1. MARTIN NYONGESA1ST PLAINTIFF/APPLICANT
2. GEORGE SIMIYU WAFULA.....2ND PLAINTIFF/APPLICANT
3. EDWARD MUSOMBI2ND PLAINTIFF/APPLICANT
4. JOHN BAKARI MAKOKHA3RD PLAINTIFF/APPLICANT
5. TOM SAMUEL NASONGO4TH PLAINTIFF/APPLICANT
6. CHARLES OMONDI VITOYO.....6TH PLAINTIFF/APPLICANT
7. JOHN WEKESA KIBULO7TH PLAINTIFF/APPLICANT
8. EBOSO KENNEDY8TH PLAINTIFF/APPLICANT
9. JOHN ALBERT SAMBULA 9TH PLAINTIFF/APPLICANT
10. JENTRIX NASIPWONDI SWALA..... .10TH PLAINTIFF/APPLICANT
11. JEREMIAH ITHALIE MUCHIRI11TH PLAINTIFF/APPLICANT
12. BEN WANJALA MATUMBETI12TH PLAINTIFF/APPLICANT
13. STANLEY WANGANA MWANGI 13TH PLAINTIFF/APPLICANT
14. JOHN WEKESA MURUTU 14TH PLAINTIFF/APPLICANT
15. LAZARO NAMIANYA WANYONYI15TH PLAINTIFF/APPLICANT
16. ISAIAH WANYONYI16TH PLAINTIFF/APPLICANT
17. ERICK WABULULU17TH PLAINTIFF/APPLICANT
18. ISACK KINYANJUI18TH PLAINTIFF/APPLICANT
19. JACK WAFULA19TH PLAINTIFF/APPLICANT
20. JUDITH WALUMBE20TH PLAINTIFF/APPLICANT
21. CATHERINE WELIKHE21ST PLAINTIFF/APPLICANT

22. AGGREY ALOSE MUKIRIMA22ND PLAINTIFF/APPLICANT

23. MOSES MWANDA23RD PLAINTIFF/APPLICANT

VERSUS

ELDORET EXPRESS LTDDEFENDANT

R U L I N G

1. The Applicants are all members and or shareholders of Tawai Limited, a Limited Liability Company incorporated in the Republic of Kenya. The Applicants filed a Notice of Motion dated 9/3/2016 in which they seek an injunction restraining the Respondent (Company) from interfering with occupation of their portions comprised in **LR No. 5707/R**. The Respondent Company which was duly served neither filed grounds of opposition nor replying affidavit. The application therefore proceeded ex-parte.

2. The Applicant contends that Tawai Limited subdivided **LR No 5707/R** into **291 Plots** which were then given to the Applicants and others. That consent to subdivide was duly given and the Applicants were shown their respective portions which they occupied. That the Company has threatened to evict them from their respective portions and has gone ahead to cut down mature trees growing on their farms. That the Company has been doing this each planting season and that unless, the Company is restrained, it will evict them from their land.

3. The Applicants further contend that the Company has enlisted the services of the Kenya Police Reserves who are going round their farms destroying their properties and threatening to evict them. That the situation on the ground is volatile and unless the orders are granted, there is a likelihood of chaos breaking out.

4. I have considered the Applicant's application as well as the annexures thereto. This being an application for injunction, the Applicants are expected to demonstrate that they have a prima facie case with probability of success. An injunction will not normally be given unless otherwise the Applicant will suffer loss which will not be compensable in damages. Where the court is in doubt, it will decide the application on a balance of convenience.

5. In the instant case, the Applicants have not disclosed that what is described as **LR No 5707/R** is already registered in the name of the Respondent Company the same having been sold to it by **Kaitet Tea Estates Limited**. They have also not disclosed that **Tawai Limited** where they are members or shareholders is currently in court over the ownership of the same property. This case was registered in **Kitale as HCCC No. 18 of 2008** between ***Eldoret Express Limited -Vs- Tawai Limited***. This case has since been transferred to Eldoret Environment and Land Court.

6. It is not possible that subdivision of a property which is registered in the name of the Respondent would have been carried out in 2102 unless the approval for sub division was given without material disclosure. The Applicants have deliberately omitted part of the title which shows the ownership of the land in dispute. An injunction is an equitable remedy and whoever comes before the court has to come with clean hands.

7. Tawai Limited is fighting over the same land and at the same time its members are fighting on their own in separate suits. What is happening in the present case amounts to an abuse of the process of the court. Besides this, shareholders of a company or its members cannot bring a suit on behalf of the Company. The company has a separate and distinct entity from its members and shareholders and the Company's property belongs to the Company and not the shareholders or members. What members own are shares. Members cannot bring a suit on behalf of a Company to litigate on wrongs committed against a Company. It is for this reason that I find that the Applicants have not demonstrated that they have a

prima facie case with probability of success. The property is not theirs. As I have indicated herein above, the disputed property is currently in the name of the Respondent and Tawai Limited is trying to have it back. Until the dispute before the Eldoret court is heard and determined, there is no way the Applicants herein can again purport to be litigating on the same property.

8. If Tawai Limited finally wins the case and the property reverts to it and the same is shared among the shareholders, any loss which the Company or its shareholders would have suffered is capable of being quantified and claimed from the Respondent. I therefore find that the Applicants will not suffer loss which will not be compensated in damages.

9. I have no doubt in my mind as to call for determination of this application on a balance of convenience. I find that the Applicant's application lacks merit. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 5th day of May 2016.

E. OBAGA

JUDGE

In the presence of Mr Pukah for Plaintiffs/Applicants

Court Assistant – Isabellah

E. OBAGA

JUDGE

5/5/16