

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL APPEAL 49 OF 2008

SIVILIUS KITHUCI NJUKI1ST PLAINTIFF

ESBON NGANGA WAMBUGU.....2ND PLAINTIFF

NGAI KAREIYU.....3RD PLAINTIFF

IRERI RUMINJO.....4TH PLAINTIFF

VERSUS

ALICE NJUKI MUKONO-sued as legal representative of

Njuki Mukono deceased and 11 OTHERS.....DEFENDANTS

RULING

The application before me is the one dated 19/3/2009. It is premised on Order VI Rule 13 (1) b, c, d of the Civil Procedure Rules. The Applicants are asking the court to strike it out. Mr. Okwaro for the Respondents raised a preliminary objection on the basis that the application should not be supported by evidence, that it is therefore bad in law and it should be struck out.

I have considered this Preliminary Objection and in my considered view, the same is baseless. The only application for striking out which is not supposed to be supported by evidence (affidavit) is one under Order VI Rule 13 (1) (a). Indeed the applicant herein has not even cited that sub-rule. It is not upto counsel for the Respondent to imply into the applicant's application rules that they have not cited. The application is properly before the court and merits a hearing. I have considered the same along with the grounds and rival affidavits. I have studied Judge Khaminwa's Ruling which gave prohibitory/injunctive orders against the defendants. The same is sound in law and raises some very pertinent points which can only be resolved by allowing the parties to fully ventilate their issues in court. To me, this is not merely an issue of revoking the grant in question. That cause of action will not address Judge Khaminwa's points as to whether the matter was properly before the Land Disputes Tribunals which awarded the land to the deceased Njuki Mukono. This suit is in my considered view not vexatious or scandalous. It is not an abuse of the court process. The parties herein should be given their day in court. The injunctive orders in place may appear oppressive to the applicants but the same are necessary for the preservation of the said land. I therefore dismiss the application dated 19/3/2009 with costs to the Respondents.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 8th day of Oct 2009

In presence of:- Mr. Utuku for Mr Oyondi and also for Kinyua Kiama.