

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 123 OF 2018

FESTUS MAKAU KITATI.....PLAINTIFF

VERSUS

NEW KONZA RANCH ASSOCIATIONS.....DEFENDANT

RULING

1. In his Application dated 20th June, 2018, the Plaintiff is seeking for the following orders:

a. That a temporary order of injunction do issue restraining the Respondent members herein, her agents, and/or servants or any other person claiming under them, from entering, putting up structures or in any other way dealing or putting up fences or structures of any nature with all that parcel of land known as Konza South/South Block 4/ (Aimi Ma Kilungu) 1296 owned by the Applicant pending the hearing and determination of the main suit.

b. That the costs of this Application be borne by the Respondent.

2. According to the Plaintiff's Affidavit, he is the registered proprietor of land known as Konza South/South Block 4 (*Aimi Ma Kilungu*)1296 measuring 4.09119 (*the suit land*); that he owns the land after purchasing the same from the New Konza Ranch Association and that in the year 2017, some of the Respondents trespassed on the suit land.

3. The Plaintiff finally deponed that the Defendants have been wrongfully claiming ownership of the suit land and that an order of injunction should issue.

4. The Defendant's Chairman filed a Notice of Preliminary Objection and a Replying Affidavit in which he deponed that the Defendant has no capacity to be sued; that the Defendant is not aware of its members who have threatened the Applicant and that the Application should be dismissed.

5. Although the Plaintiff's advocate filed written submissions, he did not address the issue of whether the Defendant is suited or not.

6. The Defendant's advocate submitted that the Defendant is not a body corporate capable of being sued and that the Defendant can only be sued through its registered trustees.

7. In the Plaintiff's Complaint, the Plaintiff has described the Defendant as "*a Society*". Indeed, the Defendant has admitted that it is a Society and not a limited liability company.

8. A reading of Section 3 of the Societies Act shows that the Defendant does not have the legal capacity of suing or being sued in its own name. In the case of *John Otteyo Amwayi & 2 others vs. Rev. George Abura & 2 others – Civil Appeal No. 6339 of 1990*, the court held as follows:

"The Societies Act does not contain provisions with regard to the presentation and prosecution of suits by or against the unincorporated Societies. It would appear to me that the legislature did not intend that suits be brought by or against those Societies in their own names."

9. A Society can only sue or be sued through its officials. That is the law. Having failed to sue the officials or trustees of the Defendant, or the specific members of the Defendant who allegedly trespassed on the suit land, I find that the Plaintiff has not established a prima facie case with chances of success.

10. For those reasons, I dismiss the Application dated 20th June, 2018 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF MARCH, 2019.

O.A. ANGOTE

JUDGE