



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 555 OF 2017**

**Formerly Kisii HCCC NO. 61 OF 2009**

**KAIKUI NAWANKAS.....PLAINTIFF/RESPONDENT**

**VERSUS**

**JOSEPH OLE LIONKA SOIT**

**Alias LELIONKA OLE SOIT.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**DAVID DEBABA ROSOROSO Alias**

**DAVID T. KONCHELLAH.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

The Application before court is the Notice of Motion dated 30<sup>th</sup> November, 2018 which was brought under Order 40 Rule 1 and 2 of the Civil Procedure Rules seeking for an order of injunction against the Respondent stopping him from using farming and/or in any manner interfering with the Applicants possession of Land Parcel TRANS MARA/OLALUI/296 pending the hearing and determination of the suit herein. The Application was based on the grounds that the Applicants were threatened with death if they stepped on the suit land and that the Respondents are trespassers to the land who has displaced the Applicants herein from the suit land.

The Application was opposed by the Respondents who had filed a replying affidavit and he averred that he is the registered owner of the suit land and has attached to his affidavit a certificate of search and contend that the Applicant is the owner of Land Parcel No. Trans Mara Olalui/296 which does not share any common boundary with his land and that there was a previous case in which Judgement was entered in his favour between him and the Applicants and he attached a decree in Kisii Environment and Land Court Civil Suit No. 61 of 2009 and that the current suit is only meant to frustrate the enjoyment of his judgement.

I have read the Application before me and submissions filed by the respondent and from it it is now settled the condition upon which the grant of orders of injunction are granted. From the pleadings it is not in dispute that both parties own Land Parcel No. Trans Mara /Olalui/296 and Trans Mara/Olalui/294.

It is the Applicants contention that the Respondents are threatening him from his own Parcel that is, Trans Mara/Olalui/296 whereas in the instant suit it relates to Land Parcel Trans Mara/Olalui/294 and in the circumstances it was proper for the court to issue an injunction in respect of the Parcel of Land which is not the subject matter before the court.

In view of the above I find that the notice of motion lacks merit and I dismiss the same.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 19<sup>th</sup> day of July, 2019**

**Mohammed Noor Kullow**

**Judge**

**19/7/19**

In the presence of:-

N/A by parties

CA:Chuma

**Mohammed Noor Kullow**

**Judge**

**19/7/19**