



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC NO. 37 OF 2019

STEPHEN MASIANE OLE KISHOYIAN.....1ST PLAINTIFF

MESEYENGI OLE KISHOYIAN.....2ND PLAINTIFF

KUNTAI OLE KISHOYIAN.....3RD PLAINTIFF

SANGIRIANGI OLE KISHOYIAN.....4TH PLAINTIFF

DANIEL OLE KISHOYIAN.....5TH PLAINTIFF

-VERSUS-

DAVID ISSAC KISHOYIAN.....1ST DEFENDANT

FRANCIS YENKO.....2ND DEFENDANT

RULING

The Plaintiffs/Applicants by an Application dated 17th June, 2019 sought for orders of injunction restraining the 1st Defendant and 2nd Defendant from transferring, leasing and laying claim over land parcel CIS MARA/ENABELIBEL-ENENGETA/136. The Applicant also sought for orders restraining, cultivating and/or laying claim over the aforesaid parcel of land. The Application was based on the grounds that the 1st Respondent had purported to have leased 13 acres of the suit land to the 2nd Respondent without involving the other beneficiaries of Kishoyian Family and that the 1st Defendant signed a lease agreement with the 2nd Defendant subsequent to which the 1st Defendant has taken possession of the 13 acres. The Applicants further contend that the suit land is registered under the persons who are all deceased and that leasing of the land by the Applicant which is family land is illegal and unless the Respondents are stopped they will suffer irreparable loss and damage.

The Application was supported by the Affidavit of one Stephen Masiane Kishoyian in which he deponed that Land Parcel Cis Mara/Enabelibel-Enengeta/136 is owned by the Kishoyian family and the 1st Defendant had leased about 13 acres of the land to the 2nd Defendant and despite several attempts to resolve the matter herein the 1st Defendant has also removed a restriction on the land without involving the other beneficiaries of the land and without obtaining their consents. The Applicant contends that the actions of the 1st Defendant will cause them irreparable loss and damages.

The Application was opposed by the 1st Defendant who had filed a Replying Affidavit. The 1st Defendant averred that he is a member of the Kishoyian family who own the suit land and that he had only leased the portion that was shown to him as his share of the suit land and further states that he has never stopped the other members of the family from engaging their parcels. On the removal of the restrictions on the land the 1st Defendant contends that the restriction on the land was about the issuance of title deed and not about leasing of the land and that the said restriction was removed when adequate Notice was given to the Registrar.

I have read the Application before me and the submissions filed by the Applicant. This is an Application in which the Applicant is seeking equitable and discretionary orders of injunction. The grounds upon which the orders of injunction can be granted are now well settled as laid down in the case of **GEILLA –VS-CASSMAN BROWN(1973) E.A.358** and reiterated severally are, first the Applicant must show prima facie case with a probability of success, secondly that compensation will not be adequate and in whose favour does the balance of convenience lie

In the instant case I find that the Applicants have demonstrated that they have established a prima facie case against the Respondents in that they are members of the Kishoyian Family who jointly own the suit land and despite contravention by the 1st Respondent that he was merely leasing the portion that was his, I find no proof of the existence of the share.

Having found that the Applicants have established a prima facie case with a probability of success it is also my finding that the balance of convenience in the matter tilts in favour of the Applicants.

The upshot of the above is that the Notice of Motion dated 17th June, 2019 is merited and I consequently allow the same as prayed.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **13TH** day of **NOVEMBER, 2019**

Mohammed Kullow

Judge

13/11/19

In the presence of: -

CA:Chuma/Kimiriny

Mr. Tanyasis for 1st to 5th Applicants

N/A for the respondents

Mohammed Kullow

Judge

13/11/19