



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 10 OF 2018

TAWAI LIMITED.....PLAINTIFF/APPLICANT

VERSUS

NATHAN WANJALA MUHINDI.....1ST DEFENDANT/RESPONDENT

FRED JUMA MUMIA.....2ND DEFENDANT/ RESPONDENT

PATRICK WAFULA MAKOKHA.....3RD DEFENDANT/ RESPONDENT

ALFRED SINDANI WANYONYI.....4TH DEFENDANT/RESPONDENT

MARTIN NYONGESA.....5TH DEFENDANT/RESPONDENT

NATHAN WANYAMA.....6TH DEFENDANT/RESPONDENT

RULING

1. This is not a ruling on the application dated 30/1/2018 and filed in court on 31/1/2018 though submissions have been filed in respect thereof. That application has been brought by the plaintiff. It is worthy to note that it seeks the following orders:-

(1)spent

(2)spent

(3)spent

(4) A temporary injunction be issued against the 1st, 2nd, 3rd, 4th, 5th and 6th defendants/respondents jointly and severally by themselves, their authorized agents, workers, servants, representatives, family members whosever from selling and or purporting to sell shares of the plaintiff/applicant and or purporting to act as the directors of the plaintiff pending the hearing and determination of this suit. (emphasis mine)

(5) A temporary injunction be issued against the 1st, 2nd, 3rd, 4th, 5th and 6th defendants/respondents jointly and severally by themselves, their authorized agents, workers, servants, representatives, family members whosever from selling and or purporting to survey, sell, lease, charge, dispossess, alienate, hand over to purported members of the plaintiff/applicant to till and or act in any other manner to prevent the plaintiff and or its members peaceful possession, access and or use of parts of and or the entire Land Parcel No. Tawai Farm, LR. No. 5707/R pending the hearing and determination of this suit.

(6) The Officer in-Charge of Station (OCS) Kitale Police Station be directed to ensure the orders herein are obeyed and that peace and order is restored on LR. No. 5705/R Tawai Farm.

(7) Costs of this application be provided for.

2. The applicant has brought the application under *Order 40 Rule 1,2 & 2A and Order 51 Rule 1* of the *Civil Procedure Rules*. The grounds upon which the application is made are contained at the foot of the application. The application is supported by the affidavit of **George Mubichakani Malanga** the **Chairman** and one of **Directors** of the Plaintiff dated 31/1/2018.

3. There is another application by the applicant dated 27/2/2018 and filed in court on the same date. It seeks the following orders:-

(a) This application be certified urgent and be heard on priority basis.

(b) The 1st, 2nd, 3rd, 4th, 5th and 6th defendants/respondents property worthy Kshs.1,000,000/= each be attached as punishment for contempt of court for their breach of court orders herein dated 1st February, 2018.

(c) The 1st, 2nd, 3rd, 4th, 5th and 6th defendants/respondents be committed to civil jail for six (6) months for contempt of court for breach of court orders herein dated 1st February, 2018.

(d) Costs of this application be provided for.

4. The application has been brought under *Order 40 Rule 3(1) (2) & (3) and Order 51 Rule 1 of the Civil Procedure Rules and Section 3, 3A and 63 (e)* of the *Civil Procedure Act Cap 21 Laws of Kenya*.

5. The grounds upon which the application is made are contained at the foot of the application. They are that:- the court should be held in great honour and its orders obeyed diligently; that this honourable court granted orders of injunction on 1/2/2018 which were issued on 5/2/2018; that THE same orders were served upon the 1st, 2nd, 3rd, 4th, 5th and 6th defendants/respondents of Tawai Farm on 6/2/2018; that the same orders were served upon the 1st defendant/respondent on 7/2/2018 at Kitale Law Court; that the defendant have continued to purport to sell the shares of the plaintiffs/applicants to other people who are continually entering into the suit land and tilling and erecting structures thereon and that THE acts of the defendant have brought scorn, ridicule and dishonor to the honourable court and granting the orders sought is the only remedy to restore the court's image.

6. These two applications have drawn the court's attention to the contents of the plaint. The primary prayer listed as the first in that plaint is that the defendants be enjoined jointly and severally to restrain them by themselves or their agents from selling or purporting to sell shares of membership to the plaintiff.

7. It appears to me that the issue of ownership or transfer of the land is preceded by the issue of who are the correct directors of the plaintiff company and in my view this is not within the mandate of this court. This court would not skip the issue of directorship and determine the matters of ownership of the land. It would be improper.

8. I therefore order that this matter is hereby transferred to the High Court for a determination of the leadership wrangles between the disputing parties.

Dated, signed and delivered at Kitale on this 25th day of October, 2018.

MWANGI NJOROGE

JUDGE

25/10/2018

Coram:

Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kassim for plaintiff/applicant

Mr. Rioba for defendant absent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

25/10/2018