



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**

**AT MILIMANI**

**ELC NO. 988 OF 2015**

**RWAMBA WAWERU KARANJA** (*Suing Through His Attorney*)

**MAURICE NGUGI KARANJA &**

**STEPHEN KARANJA WAWERU.....APPLICANT**

**=VERSUS=**

**OLE KOIKAI .....1<sup>ST</sup> RESPONDENT**

**DHL HOUSING COOPERATIVE SOCIETY LTD.....RESPONDENT**

**RULING.**

1. The two applicants namely *Maurice Ngugi Karanja* and *Stephen Karanja Waweru* are holders of a Power of Attorney donated by the Plaintiff *Rwamba Waweru Karanja* who is their brother. The Plaintiff is the registered owner of *L.R.No. Kajiado/Kisaju 6736, 6737 &6738(suit lands)*.The applicants brought a suit against the two Respondents in which they sought among other prayers, a permanent injunction restraining the Respondents from interfering with the suit lands. The applicants contemporaneously filed a Notice of Motion in which they seek orders restraining the Respondents from interfering with the suit lands.

2. The first Respondent who was duly served with all pleadings neither entered appearance nor filed any reply to the applicants' application. It is only the second Respondent who responded to the applicants' application.

**APPLICANTS' CONTENTION**

3. The applicants contend that their brother acquired the suit lands in the year **2000**. That the suit lands were subdivisions of *LR.No.Kajiado/Kisaju/1991*.That their brother is currently based at the **U.S.A**. That sometime in **2005**, the Respondent started making attempts of interfering with the suit lands.

4. The second Respondent through its agents claimed that they had purchased land from the first Respondent. The second Respondent's agents went to the Land Registry at Kajiado where they caused the Registrar to issue summons requiring the applicants to be available at the suit lands. They duly obeyed the summons but no one appeared at the time indicated. They left. The Second Respondent's agents have since been interfering with the suit lands. They now fear that the Respondents might even proceed to sell the suit lands to their detriment unless restrained by the Court.

## **SECOND RESPONDENT'S CONTENTION.**

5. The second Respondent contends that it owns **LRNo. Kajiado/Kisaju/1747** which it acquired in 2012. That the land is adjacent to the one owned by the applicant and that there is really no interference with the suit lands. That there could only be an issue of boundary dispute which can be sorted out by sending a surveyor who will point out beacons. That the second Respondent's members are desirous of having their land subdivided and given to them.

## **ANALYSIS**

6. This is an application seeking for a temporary injunction pending hearing and determination of the suit. The principles for grant of a temporary injunction are now well settled. They are clear as was set out in the celebrated case of **Giella Vs Cassman Brown & Co.Ltd [1973] EA 358.**

7. There is no contention that the plaintiff is the registered owner of the suit lands. The second Respondent has indicated that it owns land adjacent to the suit lands. The second Respondent has impliedly admitted that if there could be any problem, it only relates to a boundary dispute. This is an admission that it does not know the boundaries of its land. The applicants are contending that the Respondents are interfering with the suit lands.

8. The only issue for determination in this matter is whether they are entitled to injunctive orders. One of the conditions for grant of an injunction is that an applicant has to demonstrate that he has a prima facie case with probability of success. The applicants in this case have demonstrated that the suit lands belong to their brother who has donated a power of attorney to them. They have demonstrated that there is some interference with the suit lands. This is why there were summons by the land Registrar. Before the dispute is resolved, there has to be an order preserving the properties.

9. The second Respondent has indicated that it intends to subdivide its land to its members. The second Respondent should not be allowed to do so as there is a dispute touching on the suit lands. The applicants have demonstrated that they have a prima facie case with probability of success.

10. Counsel for the applicants and the Second Respondents have raised issues on ownership. There is no one contesting over another's ownership. The dispute is on interference with the suit lands. Whether the second Respondent's land exists or not is not an issue before me at this stage. What I have to decide is whether the applicant has demonstrated a prima facie case and a prima facie case does not necessarily mean one which will ultimately succeed. I therefore find that the applicants have demonstrated that they have a prima facie case with probability of success.

## **CONCLUSION**

11. For the reasons given hereinabove, I find that the applicant's Notice of Motion dated **8<sup>th</sup> October 2015**, is well founded. The same is allowed in terms of **prayers (3) and (4).**

Dated, Signed, and delivered at Nairobi this **6<sup>th</sup>** day of **February 2017.**

**E.O.OBAGA**

## **JUDGE**

In the presence of:-

M/s Mathenge for Mr Irungu for the applicant

M/s Mathenge for Mr Gitonga for 2<sup>nd</sup> Respondent

Hilda: Court Assistant

**E.O.OBAGA**

**JUDGE**