



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

**AT NAKURU**

**ELC NO. 329 OF 2014**

NABALO KARIANKEI.....1<sup>ST</sup> PLAINTIFF

SANARE KARIANKEI.....2<sup>ND</sup> PLAINTIFF

VERSUS

RUKUTI KORIATA.....1<sup>ST</sup> RESPONDENT

DAVID NAMPASO.....2<sup>ND</sup> RESPONDENT

EDWARD NAMPOSA .....3<sup>RD</sup> RESPONDENT

FRANCIS TANGILE .....4<sup>TH</sup> RESPONDENT

DISTRICT SURVEYOR NAROK .....5<sup>TH</sup> RESPONDENT

THE DISTRICT LAND REGISTRAR..6<sup>TH</sup> RESPONDENT

THE HON. ATTORNEY GENERAL.....7<sup>TH</sup> RESPONDENT

**RULING**

***(Application for injunction; plaintiffs claiming that their deceased father was entitled to 25 acres of land from a Group Ranch but only got title to 10 acres; allegation that 1<sup>st</sup> defendant obtained the balance of 15 acres by fraud; no evidence that deceased was entitled to 25 acres of land; no evidence of any fraud by 1<sup>st</sup> defendant; no explanation as to why suit has been filed 18 years after 1<sup>st</sup> defendant got title; no prima facie case established; application dismissed with costs)***

1. This suit was commenced by way of plaint filed on 28 November 2014. The plaintiffs are the legal representatives of one Musama Kankei (deceased). They have averred that the deceased was a member of Olgilai Group Ranch which was dissolved in the year 1996. It is their case that upon dissolution, the deceased was entitled to 25 acres of land. It is further pleaded that the 1<sup>st</sup> defendant was never a member of the Group Ranch and therefore not entitled to any land. It is pleaded that in the year 1996, the 1<sup>st</sup> defendant in collusion with the other defendants, fraudulently subdivided the 25 acre share of the deceased into two parcels, one of 15 acres which was registered in the name of the deceased, and the other of 10 acres, in the name of the 1<sup>st</sup> defendant. It is contended that owing to the fraud, no good title

was passed to the 1<sup>st</sup> defendant. In the case, the plaintiffs wish to have an order cancelling the 1<sup>st</sup> defendant's title to the land parcel Narok/Cis Mara Ololulunga/3889 (the suit property) and that the same be registered in the name of the deceased. They also want a permanent injunction to stop the 1<sup>st</sup> defendant from dealing with the said land together with costs.

2. On 17 December 2014, the plaintiffs filed an application for injunction mainly seeking two orders as follows (paraphrased) :-

- i. *That pending hearing of the suit, there be a stay of proceedings of Civil Suit No. 107 of 2013 filed in the Narok Principal Magistrate's Court (Rukuti Koriata vs Sanare Ole Kariankei).*
- ii. *That pending the hearing of the suit, there be issued an interlocutory injunction to stop the defendants from selling, alienating, leasing, charging or transferring the suit property.*

3. In the supporting affidavit, it was averred that the 1<sup>st</sup> defendant has in the matter before the subordinate court, sued the 2<sup>nd</sup> plaintiff in his own name whereas in this suit, the plaintiffs are acting on behalf of the estate of their father. It was further stated that there is a risk that the 1<sup>st</sup> defendant may sell or transfer the land.

4. The application dated 17 December 2014 came before me on 24 September 2015 when Ms. Muigai for the 1<sup>st</sup> defendant applied to file the 1<sup>st</sup> defendant's documents and reply to the application out of time. I directed counsel to file and serve the Reply within 7 days. I have not seen any reply filed, save for that which was annexed to the application seeking to file the documents out of time.

5. On 15 March 2016, the plaintiffs filed an amended motion dated 1 March 2016. What I can see is that the prayer seeking to stop the case Narok CMCC No. 107 of 2013 has been removed and an amendment to the prayer for injunction to include an order stopping the 1<sup>st</sup> defendant from constructing structures on the suit property. The application first came before me on 15 March 2013 ex-parte and I directed that it be heard on 31 March 2016. On this day, Mrs. Ndeda who held brief for Ms. Muigai, applied for adjournment which I declined and directed the application to proceed. Mr. Karanja Mbugua, counsel holding brief for Mr. Ochecho Onduso for the applicants made brief submissions. Mrs. Ndeda left it to the court.

6. I have considered the matter. The application before me is one for injunction. The principles applicable in an application of this nature were set out by the Court of Appeal in the case of ***Giella vs Cassman Brown (1973) EA 358***. It was held that an applicant needs to set out a prima facie case with a probability of success and also show that he stands to suffer irreparable loss if the injunction is not granted. If in doubt, the court will decide the application on a balance of convenience.

7. The case of the plaintiffs is that their late father was entitled to 25 acres out of the Group Ranch. They annexed to their affidavit a copy of the register of Olgilai Group Ranch. It is of course their position that the deceased was entitled to 25 acres and not the 10 acres to which he got title to. They claim that the title of the 1<sup>st</sup> defendant is fraudulent. I am afraid that apart from the mere assertion that the deceased was entitled to 25 acres, there is nothing before me, which supports that assertion. The register produced by the plaintiffs only bears names of members. It does not reveal what acreages each member was entitled to. It cannot be used to support the allegation that the deceased was entitled to 25 acres of land. I also note that the title of the 1<sup>st</sup> defendant was issued on 29 July 1996. This case was filed on 28 November 2014 and I have not seen any explanation as to why the case was filed more than 18 years since the 1<sup>st</sup> defendant obtained title. It could very well be that this case is out of time. But most importantly, I have not been shown any evidence that the 1<sup>st</sup> defendant may have procured his title by way of fraud. I am not therefore convinced that the plaintiffs have demonstrated a prima facie case with a probability of success. I am not in doubt, and I therefore need not consider the balance of convenience. I find that the application herein has no merit and it is hereby dismissed with costs.

**Dated, signed and delivered in open court at Nakuru this 18<sup>TH</sup> day of May, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

Mr. Karanja Mbugua holding brief for Mr. Ocheo Onduso for plaintiffs/applicants

Ms. Mary Muigai present for 1st defendant/respondent

Court Assistant: Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**