



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 734 OF 2013**

**KENYABROADCASTING  
CORPORATION.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**KOMAROCK RANCHING & FARMING**

**CO-OPERATIVE SOCIETY LT.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**RULING:**

The Plaintiff/Applicant herein **Kenya Broadcasting Corporation** by a Notice of Motion dated 21<sup>st</sup> June, 2013, seeks for an interlocutory injunction to restrain and prohibit the Defendants/Respondents whether by themselves, through their agents, servants and/or all claiming under them from dealing in any manner whatsoever, including disposing of any interest and/or transferring and/or interfering with the occupation of **LR No.Donyo Sabuk /Komarock Block 1/9218** and that Officer Commanding Komarock Police Station do provide security in the implementation of the Order and for costs of the application.

The application is premised upon the grounds that on 19<sup>th</sup> and 20<sup>th</sup> June, 2013 the Defendants agents and/or servants entered into the suit land **LR No.Donyo Sabuk/Komarock block 1/9218** with a view to sub dividing the same among their members.

The application was opposed by the 1<sup>st</sup> Defendant who filed its Replying Affidavit through one **Bernard Maembe**, the chairman of the 1<sup>st</sup> Defendant. The said Replying Affidavit was sworn on 5<sup>th</sup> July 2013.The 2<sup>nd</sup> Defendant though served did not enter appearance nor file any pleadings opposing the instant application.

The plaintiff in support of its application relied on the annexed affidavit of **Waithaka Waihenya**, the Managing Director of the Plaintiff herein. The deponent stated that the plaintiff is a State Corporation established in 1989 pursuant to Kenya Broadcasting Corporation Act. It's preamble states as follows:-

**“ An Act of parliament to establish the Kenya Broadcasting Corporation to assume the government functions of producing and broadcasting programmes or parts of programmes by sound or television; to provide for the management, powers functions and duties of the corporation, to provide for the control of broadcasting receiving sets and for the licensing of dealers, repairers and importers of broadcast receiving sets; and for connected purposes”.**

It was further averred that the plaintiff who is a State Corporation has been in occupation of suit

land since 1978 and the suit land is in the

name of **Permanent Secretary** to the **Treasury as a trustee of Ministry of Information and Communication**. This is evident from annexure WW1, that the Plaintiff has been in possession and occupation of the suit land and has erected transmission station and communication masts as evident from annexure **WW3**.

However the Defendants have threatened to enter into the suit land **LR No.Donyo Sabuk/Komarock block 1/9218** and sub-divide the same and that would interfere with the Plaintiff Broadcasting apparatus and its operations will ground to a halt which would have adverse effects and the government stands to lose the said land.

The 1<sup>st</sup> Defendant denied the allegations contained in the plaintiff's supporting affidavit. The 1<sup>st</sup> Defendant retaliated that the suit land belongs to itself and its members. That on 26<sup>th</sup> June, 2013 the members had gone to inspect the suit land when they were repulsed by the Officer Commanding Kangundo Police Station who informed them that the land belonged to the **Permanent Secretary, Treasury**. The 1<sup>st</sup> Defendant further stated that the land in question did not belong to the Government but private individual.

The parties herein consented to canvass this Notice of Motion by way of Written Submissions, which I have considered. The counsels

attached various case law which I have also considered. As I stated, I have considered the Written Submissions filed by both counsels and have read each of the cited cases and I am now in a position to address myself to the issues at hand.

The plaintiff has sought for injunctive relief and it has to establish the conditions set out for grant of such orders. Those conditions were spelt out in the case of **Giella Vs Cassman Brown and Co .Ltd ( 1973) EA 358**. Where the Court held that the applicant must show that :-

- a. *He has a prima facie case with probability of success.*
- b. *That the applicant will suffer irreparable loss which cannot be adequately compensated in any way or by an award of damages.*
- c. *When the court is in doubt, to decide the case on a balance of convenience.*

As I addressed the issues herein, I will resist the temptation to finally determine issues in controversy and facts in dispute at this interlocutory stage. I will leave those issues to be determined by the trial court.

The Plaintiff has alleged that it is the legal owner of the suit land and has been in possession of and occupation of the same since 1978. On the other hand the 1<sup>st</sup> Defendant has alleged that the suit land is its private property and the 1<sup>st</sup> Defendant has threatened to enter and damage the applicant's property.

Has the applicant herein satisfied the conditions set out in various decided cases for grant of injunctive relief?.

The Plaintiff/applicant alleged that it is the legal and beneficial owner of land parcel No. LR No. Donyo **Sabuk/Komarock block1/9218**. That the said parcel of land is in the name of Permanent Secretary to the Treasury who is holding it for Trustee of the Ministry of information and communication. There is indeed a lease issued by the Commissioner of Lands dated 5<sup>th</sup> December, 2011. There is also evidence that the Plaintiff has been operating at the suit land since 1978. There are broadcasting apparatus which are erected thereon. The 1<sup>st</sup> Defendant acknowledges that the plaintiff has been operating on the said area but disputes the acreage. However, the lease WW1 shows that the acreage for the land is 503.55 ha but not the 23 acreage as stated by the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant has alleged that the purported lease is

irregular as drawn as the same is unsigned by the land Registrar. The issues raised by the 1<sup>st</sup> Defendant are issues which can only be determined at the time of trial after evidence has been called.

The Plaintiff has shown that it has been in possession of the suit land since 1978 and the suit land is held by Treasury as a custodian of all Government Assets. The 1<sup>st</sup> Defendant has alleged that the suit land belongs to it and is ready to enter and sub-divide the said land as stated in the replying affidavit by Bernard Maembe in paragraph 12.

**“The corporative has since resolved to subdivide and allocate all the remaining land amongst its members, the suit land being one of them”.**

It is therefore evident that the 1<sup>st</sup> Defendant intends to carry their threat of entering into the land. The plaintiff has been able to establish that it has a prima facie case with probability of success.

The threat to enter into the land is real and thus might alter the plaintiff’s broadcasting apparatus. There is a possibility of damage to this property. The Plaintiff has also established that it has a prima facie case with probability of success.

The Plaintiff has occupied the suit land and has erected its broadcasting masks and apparatus, I find that though the 1<sup>st</sup> Defendant has disputed the plaintiff’s ownership of this suit land, that dispute can only be resolved in a full trial. However, there is need to preserve the **Status Quo**. I find that the court is not in doubt and I do not need to deal with the 3<sup>rd</sup> Principles of when the court is in doubt.

I have also considered the authority quoted by the Plaintiff **Kenya Hotel Properties Ltd Vs Willisden Investment Ltd & 4 others (2013) eKLR** where the court of Appeal held that public interest overrides private interest and that the court should safeguard public assets.

In the instant case, I find that the public interest herein dictates that I order for preservations of the Status Quo. In view of the above, I find that the plaintiff’s application dated 21/6/2013 is merited. I hereby confirm the interim orders issued on 24/6/2013. The court also allows the Plaintiff/Applicants **prayers No.3 and No.4**.

Costs in the cause

The Plaintiff to set the matter down for hearing within the next **12 months** so that the issues at hand can be solved expeditiously.

It is so ordered.

Dated, Signed and Delivered this 14<sup>th</sup> day of **March, 2014**.

**L.N.GACHERU**

**JUDGE**

In the Presence of:-

.....for the Plaintiff/ Respondent

..... for Defendant/Applicant

Ann: Court Clerk