



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L 42 OF 2014**

**MARIGAT GROUP RANCH.....1ST PLAINTIFF**

**FREDRICK KILLEN.....2ND PLAINTIFF**

**JOHN CHEBII.....3RD PLAINTIFF**

**MICHAEL CHEROP.....4TH PLAINTIFF**

**VS**

**JOSHAU KISENGER.....DEFENDANT**

**RULING**

The application before me is that dated 25 September 2014 filed by the defendant. It is seeking the following orders :

(i) That this Honorable Court be pleased to grant an order restraining the respondents by themselves, their servants, agents and/or employees from taking over the land where the applicant resides and boundaries defined between the applicant and his neighbours, alienating, re-planning, issuing title to 3rd parties, or converting it into a center, a public market or utility with the intent to defeat the applicant's claim or interest or in any other manner interfering with the applicant's parcel of land measuring 35 acres or thereabouts comprised of all that parcel of land known as Baringo/Marigat/ 1 registered in the name of the 1st respondent for the benefit of its members until this suit has been heard and determined.

(ii) That the respondents be ordered to disclose the current status of the applicant's parcel as to whether it has been demarcated or not.

(iii) That since everyone within the neighbourhood have been given their land, this Honourable Court be pleased to compel that respondents to demarcate and allocate the applicant his portion.

The application is supported by the affidavit of the defendant. He is the administrator of the estate of one Kipkulei Mibei (deceased) who is one of the registered members of the Marigat Group Ranch, the 1st respondent.

The Marigat Group Ranch is the registered owner of the land parcel Baringo/Marigat/1 and is in the process of sub-dividing it to its members. It is actually Marigat Group Ranch which filed this suit against the defendant claiming that he has trespassed into the land yet he is not a member of the Group Ranch and wanted orders that he be declared a purchaser. An application for injunction was filed against him. In my ruling of 31 March 2014, I held that it appeared to me as if he is on the land courtesy of permission granted by the family of Kipkulei Mibei, and held that I cannot prevent him from being on the land if the

family want him to be there and neither had any evidence been tabled that he is obstructing the plaintiffs from sub-dividing the suit land to its members, or that he has interfered with the occupation of other members. I directed the Group Ranch to move with speed to demarcate the suit land to its members.

It seems to me, that through this application, the defendant seeks to interfere and/or stop the very process which has to be undertaken for every member to get his title. The applicant also wants the land that he is occupying not to be affected in any way in the demarcation process.

I am afraid that I cannot grant him these orders. The Group Ranch representatives have a mandate to carve out titles to each member. What each member will end up getting title to, does not necessarily have to conform directly to what such person is currently in occupation of. There will inevitably be some changes in the occupation of the ground based on physical planning considerations and the need to accommodate the interests of all members. In fact the family of Kimibei has sworn a replying affidavit to state that they have no problem with the ongoing demarcation process.

I cannot stop that process nor give directions to the Group Ranch representatives on who should get what land parcel, where, and of what size. That is their mandate and it has not been demonstrated to me that the representatives are exercising their mandate irregularly. Neither can I allow the defendant to vex them with his demands. I will go the extra mile to stop him from interfering with the process, and if he does so, he will be liable to contempt of court.

That said, I trust that the representatives will attempt to accommodate every member fairly and discharge their mandate according to law.

For the above reasons, this application is dismissed with costs.

**DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF OCTOBER 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Delivered in the presence of:***

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***Mr. Tom Mutei for the plaintiff/respondent.***

***Mr. L.K. Kipsang holding brief for Mr. Kipkenei for defendant/applicant.***