



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU

CORAM: GICHERU, SHAH & BOSIRE, JJ.A.

CIVIL APPLICATION NO. NAI 156 OF 2001 (NKU 22/01)

BETWEEN

JOHN Ole KARIA APPLICANT

AND

AMOS MIRAU RESPONDENT

**(An application for an injunction & stay of a ruling of
the High Court of Kenya at Nakuru (Ondeyo J) dated
22nd March, 2001**

in

NKR.H.C.C.C. NO. 40 OF 2001)

RULING OF THE COURT

This is an application brought under **rule 5 (2) (b) of the Rules of this Court** whereby the applicant, John Ole Karia, seeks an order to stay the execution of the order made by the superior court (Ondeyo J) on 22nd March, 2001, whereby the learned Judge allowed the respondent's (the plaintiff in the suit) application for an interim injunction to restrain the applicant by himself, his agents and/or servants from entering, remaining or in any way interfering with a parcel of land known as **NAKURU/KAPSITA/331** (the suit land) until the hearing and determination of **Nakuru H.C.C.C. NO. 40 OF 2001**.

The applicant claims to have a certificate of title to the suit land issued to him on 19th September, 2000, whereas the respondent claims to have a certificate of title to the same suit land issued to him on 19th June, 2000. The green card exhibited by the respondent in the superior court shows him to be the title-holder per entries numbered 4 and 5 thereon. From that green card it appears that the respondent derived his title from one Philip Thuo Karanja who was registered as proprietor of the suit land on 16th July, 1997.

The suit land has a complete home on it built by the applicant about one and half months ago. He has a herdsman on the plot. The respondent has an incomplete house thereon and cultivates English potatoes and peas on part of the suit land. Some time ago some structure put up by the applicant was burnt down.

In terms of time the respondent has a prior title to the suit land. How two separate certificates of title

came to be issued in respect of the same parcel of land is not clear. We are however reluctant to interfere with the order of the superior court as the respondent appears to us to have a prior certificate of title and we see nothing to justify the granting of an order for stay of execution of the order of the superior court made on 22nd March, 2001 and we accordingly dismiss this application with costs.

Dated and delivered at Nakuru this 22nd day of February, 2002.

J. E. GICHERU

JUDGE OF APPEAL

A. B. SHAH

JUDGE OF APPEAL

S. E. O. BOSIRE

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR