



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

E&L CASE NO. 145 OF 2014

M'NDEGWA M'NABEA.....PLAINTIFF

VERSUS

ISAIAH KILEMI (sued as the legal Representative of the Estate of M'ITARU M'LINGERA - Deceased)1ST DEFENDANT/RESPONDENT

REUBEN NCHANA.....2ND DEFENDANT/RESPONDENT

NICHOLAS KALUNGE3rd DEFENDANT/RESPONDENT

MARIA NKIROTE.....4TH DEFENDANT/RESPONDENT

STELLA KARIMI.....5TH DEFENDANT/RESPONDENT

FLORENCE MWARI.....6TH DEFENDANT/ RSPONDENT

RICHARD NTOMBURA.....7TH DEFENDANT/RESPONDENT

WILSON KAMWIKO.....8TH DEFENDANT/RESPONDENT

JAMES KATHAIAI MUTUNGA9TH DEFENDANT/RESPONDENT

R U L I N G

This application is dated 24/09/2014 and seeks orders:-

- a. *That the application because of its nature be certified urgent and the same be heard ex-parte in the 1st instance.*
- b. *That Honourable Court be pleased to issue a temporary order of injunction restraining the 2nd defendant by himself, his agents, assigns or persons claiming under him from entering into, fence off and or in anyway interfere with the plaintiff's use and or proprietary rights over land parcel No. KIANJAI ADJ. Section/4523 pending the hearing and determination of this application.*
- c. *That the Honourable Court be pleased to issue a temporary order of injunction restraining the 2nd defendant by himself, his agents, assigns or persons claiming under him from entering into, fence off and or in anyway interfere with the plaintiff's use and or proprietary rights over land parcel No. Kianjai Adj. Section/4523 pending the hearing and determination of this suit.*

- d. *That the Honourable Court be pleased to issue interim orders of injunction restraining the defendants by themselves, their agents, assigns and or persons claiming under them from subdividing, alienating, selling and or transferring land parcel Kianjai Adj. Section 4523, 4533, 6243, 6244, 6245, 6246, 6247, 6248, 6249, 6250,6251,6252, 6253, 6254, 6255, 6256, 6257 and 6258 and or in anyway interfere with the plaintiff's use, occupation and or proprietary rights over the same pending the hearing and determination of this application inter-parties.*
- e. *That the Honourable Court be pleased to issue interim orders of injunction restraining the defendants by themselves, their agents, assigns and or persons claiming under them from subdividing, alienating, selling and or transferring land parcels Kianjai Adj. Section 4523, 4533, 6243, 6244, 6245, 6246, 6247, 6248, 6249, 6250,6251,6252, 6253, 6254, 6255, 6256, 6257 and 6258 and or in anyway interfere with the plaintiff's use occupation and or proprietary rights over the same pending the hearing and determination of this suit.*
- f. *That these orders once issued be served upon the District Land Adjudication and Settlement Officer-Tigania West for compliance.*
- g. *That costs of this application be costs in the cause.*

The application is buttressed by the affidavit of M'NDEGWA M'NABEA and has the following grounds:-

- i. *The Plaintiff who is aged about 80 years has all his lifetime lived, cultivated and occupied land parcel 4523 and 4533 Kianjai Adj. Section.*
- ii. *That 1st defendant with intent to defeat the Plaintiff's interest has transferred Parcel No. 4523 to the 2nd Defendant.*
- iii. *That land parcel 4523 was a subject in a Court case to wit Tigania Civil Case No. 132/2010.*
- iv. *The Defendant in Tigania Civil Case 132 of 2010 M'ITARU M'LINGERA now deceased was father to the 1st defendant.*
- v. *Land parcel No. 4523 was transferred during the pendency of Tigania Civil case.*
- vi. *The 2nd defendant to whom land parcel No 4523 was transferred is interfering with the Plaintiff (sic) use and occupation of the same and threatening eviction.*
- vii. *The 1st Defendant's father now deceased clandestinely and with fraudulent intention subdivided land parcel No. 4533 into 16 portions which he transferred to his children and close family members.*
- viii. *The plaintiff stands to suffer irreparably and no amount of damage can compensate.*
- ix. *Defendants stand to suffer no prejudice as none of them are either in use or occupation.*

The parties have put in Written Submissions. They have postulated diametrically opposed assertions regarding ownership and occupation of Land parcel No. 4523, Tigania Adjudication area. The 2nd Defendant has submitted that he bought parcel No. 4523 from the 1st defendant and when he bought it there were no restrictions restraining any transfer or other dealings with the suitland. He avers that he is a purchaser for value. He even claims that at the time he fenced parcel No 4523, it is the Plaintiff who showed him the boundaries.

At this stage, I am unable to make any determination with respect to the conflicting assertions proffered by the parties. This can only be done after the suit is heard in full.

The plaint in this suit places in dispute parcel No 4523 only. This application has parcel Nos: 4523,

4533, 6243, 6244, 6245, 6246, 6247, 6248, 6249, 6250,6251,6252, 6253, 6254, 6255, 6256, 6257 and 6258. The Plaintiff does not claim that parcel Numbers 6243 to 6258 are Subdivisions of parcel No. 4523. In his statement the Plaintiff says that they were subdivisions of parcel no. 4533. This application is rendered unmeritorious by the introduction of parcels of land which are not alluded to in the plaint.

I opine that introduction of parcels of land not claimed in the plaint is beyond matters validity within the ambit of what this Court can determine. for this reason, **I find the application incompetent. It is therefore dismissed in its entirety.**

Costs shall be in the cause.

It is so ordered.

Delivered in Open Court at Meru this **30th day of March, 2016** in the presence of:

CC: Daniel/Lilian

P. M. NJOROGE

JUDGE