



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**ELC NO. 11 OF 2013**

(FORMERLY CIVIL SUIT NO. 136 OF 2012 )

**AGNES NTINYIA KARRANGOI .....PLAINTIFF/APPLICANT**

**VERSUS**

**LAPIYIOI MOLOKUA .....DEFENDANT /RESPONDENT**

**RULING**

1. By way of Notice of Motion dated 30<sup>th</sup> April, 2012, the applicant seeks orders restraining the respondent from selling, transferring, charging, leasing or in any way disposing off property known as Kajiado/Dalalekutuk/5069,Kajiado/Dalalekutuk/5070,Kajiado/  
  
Dakalekutuk /5072 pending hearing and determination of the suit.
2. The application is based on grounds that the applicant is the only sibling of the respondent. Their mother, **Nashunu Molokua** died on 23<sup>rd</sup> September, 2009, their father having passed on in February 2006. Their father was survived by three (3) widows. Two of his widows eventually became the registered owners of Kajiado/ Dalalekutuk/4373 and Kajiado/Dalalekutuk/4372 respectively. Kajiado / Dalalekutuk/4374 (subject land) ought to have been registered in the name of the applicant's mother but the respondent through manipulation caused it to be registered in his name.
3. Subsequently, the respondent has subdivided the subject land into Kajiado/Dalalekutuk/5070, Kajiado/Dalalekutuk/5071,Kajiado/  
  
Dalalekutuk and Kajiado /Dalalekutuk / 4375 and sold the later to a third party. As a result the applicant has been disinherited. Unless orders sought are granted the applicant shall suffer irreparably.
4. In response thereto, by a replying affidavit the respondent deponed that he is the registered owner of Kajiado /Dalalekutuk / 5069, 5070, 5071 and 5072 and no document had been produced to show otherwise. He denied holding the property in trust for the applicant.
5. Further, he stated that the applicant had her own parcel of Land-Kajiado/Dalalekutuk/2972. Therefore the application did not disclose triable issues.
6. In a further affidavit the applicant stated that the property mentioned belonged to her husband and

- the respondent ought to have taken out letters of Administration for the estate of the deceased instead of assigning himself the whole estate.
7. I have considered written submissions filed.
  8. Conditions for granting an interlocutory injunction were set out in the case of *Giella -versus- Cassman Brown Ltd [1973] E.A. 458*. The applicant must have a prima facie case with a probability of success. Secondly, an interlocutory injunction would not issue unless the applicant will suffer irreparable loss not capable of being compensated in damages, and where the court is in doubt it decides the matter on a balance of convenience.
  9. Looking at the averments of the respondent at paragraph 6, of the replying affidavit he does not seem to deny the fact that previously the land in issue was owned by his father. His argument is that the applicant did not produce documents to show the genuine beneficiaries of their parents' estate. There is evidence that the respondent acquired title deeds to the subject property in November, 2011 after the demise of his father. It is imperative for the court to hear evidence in order to interrogate whether or not the property was acquired fraudulently as implied by the applicant.
  10. The respondent did dispose off part of the land some four (4) months after becoming the title holder. Failure to restrain him may result into the whole land being disposed off. If that were to happen and it is found that indeed the applicant is entitled to it then she will suffer irreparable damages. Consequently, a prima facie case has been established which requires issuance of the order sought.
  11. From the foregoing, I allow the application as prayed. Costs of the application will be in the course.

**DATED, SIGNED and DELIVERED at MACHAKOS THIS 18<sup>TH</sup> day of MARCH, 2015.**

**L.N. MUTENDE**

**JUDGE**