



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

SUCCESSION CAUSE NO. 551 OF 2007

IN THE MATTER OF THE ESTATE OF MAMBO NGALA also known as  
MUMBO NGALA CHITU (DECEASED)

1. JAMES KALUGU MUMBO

2. CARLOS MUMBO CHARO.....PETITIONERS

VERSUS

PETER NGALA & OTHERS.....APPLICANTS

AND

1. HARON MWANG'OMBE MAGHANJO

2. PATRICK WAMBUGU NYOIKE.....INTERESTED PARTIES

**RULING**

By way of the Notice of Motion dated 1<sup>st</sup> July, 2013 brought under certificate of urgency the applicant seeks *inter alia* the following orders:

**“THAT pending the inter partes hearing of the summons for revocation dated 10<sup>th</sup> day of April, 2013, this Honourable Court be pleased to grant an order of injunction restraining and/or prohibiting the Petitioner/Respondents and Interested Parties whether by themselves, their servants, agents and/or any person acting on their instructions, authority or command from fencing off, constructing, subdividing, disposing off, selling, alienating, evicting, denying access into and/or in any way whatsoever from dealing with the suit property herein being plot numbers KILIFI/MTWAPA/3712 to plot number KILIFI/MTWAPA/3717 arising from plot number KILIFI/MTWAPA/78.”**

The application is based on the grounds on the face of it as well as on the supporting affidavit of one **PETER NGALA**. The application which was opposed was disposed of by way of written submissions.

I have perused and have given careful consideration to the written submissions filed by both parties in this matter. The dispute arises from the distribution of the estate of one **MUMBO NGALA aka MUMBO NGALA CHITU**. The applicants claim to be beneficiaries to the estate of the deceased. The applicants

came to learn that the petitioners to the exclusion of the applicants had sought and obtained letters of administration to the estate of the deceased and the subject plot was listed as one of the assets of the deceased. The said letters were subsequently confirmed on 18<sup>th</sup> December, 2009. The applicants did on 10<sup>th</sup> April, 2013 file a summons for revocation or annulment of the Grant issued to the petitioners which summons is yet to be heard and determined.

In the meantime the petitioners have proceeded to subdivide the disputed plot into 2 different plots and have transferred the same to **HARON MWANG'OMBE MAGHANJO** and **PATRICK WAMBUGU NYOIKE** (the interested parties herein). The applicants allege that in total disregard of their occupation on the suit land the interested parties have commenced fencing and are now demanding vacant possession. The applicants being apprehensive that they may be evicted from land which they deem to be their birth right pray that no further activity contrary to their interests be allowed to proceed pending the hearing and determination of their summons for revocation.

I have considered the ruling in the case of **GIELLA –VS – CASSMAN BROWN [1973] E.A.** and I have considered the conditions set out therein for grant of an injunction. Given the fact that the applicants currently occupy the suit property and in view of the fact that removal from the land would cause them irreparable harm in the event that the Grant is revoked, I am inclined to allow the present application. The respondents claim that the applicants are not beneficiaries of the estate of the deceased and therefore have no claim to the suit land. These are questions which cannot be determined at this interlocutory stage. The court would have to hear substantive evidence from both parties in order to make a determination one way or another. It is desirable that all parties be allowed the opportunity to tender evidence to prove their claim before a final decision can be made. Any prejudice that may be occasioned to the interested parties can be mitigated by a refund of their monies and/or payment of damages. I therefore allow prayer (3) of the Notice of Motion dated 1<sup>st</sup> July, 2013. Costs in the cause.

**Dated and delivered in Mombasa this 31<sup>st</sup> day of March, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Ms. Mwatu for Applicant

Mr. Oddiaga for Respondent