



COPY

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 165 OF 2013

1. ARTHUR NGUGI MBUGUA

2. SAMPSON KIMANI MBUGUA

3. MICHAEL MURIITHI MBUGUA PLAINTIFFS

- VERSUS-

1. SAD JADI KONGO

2. ESHA HARUN KINGUNGE DEFENDANTS

RULING

[1] The suit land Title Number MSA/M/S/1/1537 is registered in the name of Jotham Mbugua Mwenja. Mr. Mwenja died in the year 2005. The letters of administration of his estate were granted to Samson Kimani Mbugua, Michael Muriithi Mbugua and Arthur Ngugi Mbugua on 26th day of April, 2013. This was vide Nairobi Succession Cause No. 2304 of 2012.

Michael Muriithi Mbugua the third plaintiff herein entered into agreement for sale to sell the same to Said Jadi Kongo and Esha Harun Kingunge the respondents herein.

On 21st December 2009. He apparently received Kshs. 850,000 for the same. Michael Muriithi Mbugua is a son of the deceased Jotham Mbugua Mwenja.

[2] It is quite clear from the agreement for sale aforesaid that the purchasers knew the vendor was not the owner and that

he would take out letter of administration of the estate and after confirmation of the grant, he would sign probate forms RL 7 and RL 9 in favour of the respondents.

[3] This land was sold by a would be beneficiary who had no letters of administration of the deceased's estate. The deceased herein had 22 living beneficiaries. The succession court has not as yet distributed the estate. It cannot be established as yet, as to to who shall inherit the suit land. The respondent herein as far as I have known have not been joined as parties to the succession cause as purchasers. Why they have not applied to be joined is difficult for me to fathom. The peculiar circumstances of this suit reveal that the suit land ought to be protected until this suit is heard and until the succession cause is finalized

and distribution done. All the other issues raised by the respondents are not for consideration at this stage. They shall be dealt with during the hearing of the suit. This application therefore succeeds. I allow it as prayed. Costs to the applicant.

Dated and delivered in open court at Mombasa this 27th day of March, 2014.

S. MUKUNYA

JUDGE

27.3.2014

In the presence of :

Mr. Wachira Kingangai Advocate for plaintiffs

Mr. Wafula Advocate holding brief for Madzayo Mrima Advocates for defendants